

CISNEROS DECLARATION
EXHIBIT PPP
REDACTED VERSION

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION
4
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6 IN RE: HIGH-TECH EMPLOYEE)
7 ANTITRUST LITIGATION)
8) No. 11-CV-2509-LHK
9 THIS DOCUMENT RELATES TO:)
10 ALL ACTIONS.)
11 _____)
12
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14 HIGHLY CONFIDENTIAL
15 VIDEO DEPOSITION OF KEVIN HALLOCK
16 June 7, 2013
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19 REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR
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10:24:38 1 focusing on a very narrow set.

10:24:41 2 Q. Was there anything in the expert report of
10:24:44 3 Kevin Murphy that contradicted the opinions that you
10:24:47 4 reached in this case?

10:24:51 5 MS. DERMODY: Object to form.

10:24:59 6 THE WITNESS: Again, I'm not sure what you mean
10:25:00 7 by "contradicted."

10:25:01 8 MR. KIERNAN: Q. Was there anything in
10:25:03 9 there that was inconsistent with the opinions that
10:25:04 10 you reached in this case?

10:25:05 11 MS. DERMODY: Object to form.

10:25:11 12 THE WITNESS: I'd have to look at it. I mean,
10:25:13 13 again, I'd be happy to look at parts. If you think this
10:25:15 14 part is inconsistent, I could comment on whether that
10:25:17 15 would be, but I -- I haven't read it in a while. And
10:25:21 16 sort of reading it is sort of trying to learn about what
10:25:24 17 was going on.

10:25:25 18 MR. KIERNAN: Q. Was there anything in his
10:25:26 19 report that caused you to do additional
10:25:29 20 investigation or examination in connection with
10:25:35 21 reaching your opinions in this case?

10:25:36 22 A. Again, I can't recall that.

10:25:42 23 Q. Is that something you would have done?

10:25:45 24 MS. DERMODY: Object to form.

10:25:47 25 THE WITNESS: Sorry, could you ask that again.

10:25:49 1 MR. KIERNAN: Q. Yeah. If there was
10:25:50 2 something in Dr. Murphy's report that was
10:25:53 3 inconsistent with the opinions that you were
10:25:54 4 reaching in this case, would that have caused you to
10:25:59 5 do additional investigation or follow-up?

10:26:04 6 A. I think if I found anything in working on the
10:26:08 7 case, or any of the depositions, there had to be six
10:26:14 8 feet of them, or maybe eight feet of them stacked up in
10:26:18 9 my office, that was relevant to the case or to the
10:26:22 10 opinions I was making, I would look into that.

10:26:27 11 Q. And do you recall doing that?

10:26:31 12 A. I did it -- there were all kinds of things I
10:26:33 13 found that I thought were relevant. That's why this
10:26:35 14 thing is so big. But I don't recall specifically with
10:26:40 15 Professor Murphy -- Professor Murphy's report.

10:26:45 16 Q. Have you discussed this case with the
10:26:46 17 plaintiffs? The named plaintiffs?

10:26:49 18 A. I have not. I'm sorry. Do you mean the named
10:26:52 19 plaintiffs as in -- could you tell me who the named
10:26:55 20 plaintiffs are?

10:26:55 21 Q. Do you know who they are?

10:26:57 22 A. I don't know them personally. You mean the
10:26:59 23 individuals?

10:27:00 24 Q. Uh-huh.

10:27:01 25 A. I don't know them, no.

10:27:05 1 Q. Have you interviewed any current or former
10:27:08 2 employees of any of the defendant companies?

10:27:17 3 A. For the purposes of this case? No.

10:27:23 4 Q. Have you interviewed any of the current or
10:27:25 5 former employees -- strike that.

10:27:27 6 Have you interviewed any of the current or
10:27:28 7 former managers at any of the defendant companies?

10:27:33 8 A. Again, for the purposes of this case, no.

10:27:38 9 Q. What about outside of this case?

10:27:39 10 A. The reason I say that is because I'd likely
10:27:47 11 know people some way or another, or met, who have worked
10:27:51 12 for -- maybe been my students, who -- but I don't have
10:27:53 13 any specific recollection of that. And certainly
10:27:57 14 haven't spoken with anybody about the case.

10:27:59 15 Q. Okay. One last line. Two minutes.

10:28:06 16 A. That's okay.

10:28:07 17 Q. All right. Since submitting your report, have
10:28:09 18 you done any additional work in connection with this
10:28:13 19 case?

10:28:14 20 A. Yes.

10:28:15 21 Q. What have you done?

10:28:17 22 A. I prepared for the deposition.

10:28:23 23 Q. Anything else?

10:28:25 24 A. Not that I can think of, no. I mean, I thought
10:28:28 25 about the case. I remember writing a note, but that was

11:18:05 1 There are others. Those I remember by the end.

11:18:18 2 Q. Okay. And paragraph 7 of your report sets

11:18:28 3 forth the assignments that you were given?

11:18:31 4 A. Right.

11:18:32 5 Q. And these are the two questions that you

11:18:34 6 answered?

11:18:35 7 A. These were -- I was asked by counsel to do

11:18:39 8 those two things, which are -- which I paraphrased for

11:18:43 9 you earlier. Those were the two items. The first being

11:18:49 10 whether defendants used formal systems, and the second

11:18:53 11 being about the suppression of pay for the employees or

11:19:02 12 workers.

11:19:03 13 Q. And then focusing on the first assignment --

11:19:06 14 A. Yes.

11:19:06 15 Q. -- 7.a., have you been involved in another case

11:19:13 16 where you were -- where you completed a similar

11:19:16 17 assignment?

11:19:19 18 A. Have I been involved in another case where I

11:19:21 19 was asked to analyze pay practices to determine whether

11:19:24 20 they were -- whether defendants used formal

11:19:28 21 administrative pay systems? No.

11:19:35 22 I do teach about formal administrative pay

11:19:37 23 systems and write about them, but I haven't done this --

11:19:43 24 I've only been -- this is my third deposition, so I

11:19:46 25 haven't done this before in a case like this.

11:19:50 1 Q. And have you -- has it been a subject of any of
11:19:55 2 your publications to research whether a particular
11:19:59 3 company or companies had formal administrative pay
11:20:04 4 systems?

11:20:11 5 A. I published a book last year called "Pay." And
11:20:20 6 in that book -- I reference the book in the report -- I
11:20:22 7 describe structures, formal pay systems, things like job
11:20:30 8 analysis and evaluation and bands and minima and maxima.
11:20:37 9 But if your question is about whether I have determined
11:20:40 10 whether a particular organization has these, I don't
11:20:44 11 remember doing a research project on that or determining
11:20:47 12 that. Many mature organizations have these kinds of
11:20:57 13 systems. It's sort of not uncommon to have systems like
11:21:02 14 this.

11:21:03 15 Q. Uh-huh.

11:21:04 16 A. In fact, I teach -- I teach in a professional
11:21:07 17 master's program where students are basically getting a
11:21:14 18 master's degree. It's called an ILR, but it's really
11:21:19 19 a -- many of them are concentrating in human resources
11:21:22 20 and organizations. And one of the courses is called
11:21:24 21 Managing Compensation.

11:21:25 22 And part of what I did in that course -- I'm
11:21:28 23 not teaching it this year, but I teach the same methods
11:21:33 24 in a broader course for a broader audience -- but those
11:21:36 25 professional master's students are basically being

11:21:39 1 trained to know how to manage these administrative pay
11:21:42 2 systems.

11:21:43 3 Q. And can you think of any examples of what you
11:21:50 4 referred to as mature company that do not have a formal
11:21:55 5 administrative pay system.

11:22:04 6 A. Again, I haven't -- I had unusual access here
11:22:09 7 to the organizations. I can't think of any off the top
11:22:11 8 of my head that don't have at least features that I'm
11:22:16 9 describing here. Things like, for example, each
11:22:20 10 defendant here is using market data. Defendants are --
11:22:26 11 you know, have other features that are kind of hallmarks
11:22:29 12 of these kinds of plans. I can't think of one off the
11:22:31 13 top of my head.

11:22:34 14 Q. And describe for me the methodology you used in
11:22:41 15 determining whether each defendant had a formal
11:22:46 16 administrative pay system?

11:22:48 17 A. Well, there is a section in the report where I
11:22:53 18 go through that. It's called Section V, starts on page
11:22:58 19 15. And in that, the way I wrote it here, which I think
11:23:02 20 is giving you an idea of my thinking, was that I -- in
11:23:10 21 the beginning part of the report, I talk about some
11:23:13 22 features of pay systems. Some of the first exhibits --
11:23:16 23 I think they might be Exhibits 2 through 6, I can
11:23:21 24 check -- are some description of some features of formal
11:23:26 25 systems. Make sure I've said that correctly. 2 through

11:23:30 1 6.

11:23:38 2 And then I go through in Section V, starting on
11:23:42 3 page 15, each defendant of the seven defendants document
11:23:50 4 evidence that they had formalized compensation systems,
11:23:53 5 and then have some examples that I found from the
11:23:56 6 materials that I reviewed.

11:23:58 7 Q. And so what was your method that you used to
11:24:04 8 reach the conclusion that they had formal pay systems?

11:24:12 9 A. My -- I think it -- I think it's what I've
11:24:16 10 said. I tried to describe here to -- in the report,
11:24:22 11 examples of how systems like this can be designed. Not
11:24:26 12 precisely, but the sort of formal -- or the features of
11:24:29 13 these systems. I call that section Compensation System
11:24:34 14 Design.

11:24:34 15 And then I read all of the materials on
11:24:39 16 these -- I read the materials on these defendants and
11:24:43 17 found in each of the seven cases, many features that are
11:24:48 18 consistent with these kinds of systems.

11:24:49 19 So for example, the one I just opened to when
11:24:52 20 you asked about this is Adobe. Adobe has job families,
11:24:57 21 grades within, and features like salary minimum,
11:25:03 22 midpoints and maximum.

11:25:04 23 Q. And are there particular features that a
11:25:09 24 company must have for you to categorize it as a formal
11:25:12 25 pay system?

11:56:12 1 discussing pay throughout this report. I could give you
11:56:14 2 some of those examples. You could sort of think in here
11:56:18 3 is not really exactly what was in the manager's mind,
11:56:21 4 but sometimes you see people discussing compensation of
11:56:26 5 particular individuals. And you could see some of their
11:56:32 6 thought processes.

11:56:35 7 An example, and I just flipped to this page,
11:56:39 8 there is a quote here, this is from -- this is from
11:56:47 9 Adobe. Someone -- Ms. Morris wrote, [REDACTED] is a strong
11:56:56 10 negotiator and would be expecting to keep his base
11:56:58 11 salary, which he puts at [REDACTED]; however, I am
11:57:01 12 recommending that he come in slightly below in base
11:57:03 13 because of internal equity relative to [REDACTED] and
11:57:07 14 because with AIP, his overall total cash will be -- and
11:57:10 15 so on.

11:57:10 16 One of the things that she was considering in
11:57:12 17 that case was -- I don't know if this is someone --
11:57:16 18 can't remember if coming from outside the company into
11:57:19 19 Adobe or from within Adobe to a new position. But one
11:57:25 20 of the things that that manager is considering is his
11:57:34 21 current salary, which she says he claims was [REDACTED]
11:57:36 22 But also his relative position to someone else who was
11:57:40 23 already in the organization.

11:57:41 24 So one of the things she was thinking about,
11:57:45 25 which is -- you know, seems reasonable, what was this

11:57:48 1 person making prior to bringing them into the company.
11:57:51 2 And the other was how will that person sit relative to
11:57:55 3 the people in his or her work group or at that level or
11:57:59 4 something like that.

11:58:00 5 So she was considering a thing that I hadn't
11:58:02 6 mentioned earlier, which is what someone is already
11:58:05 7 making if they're coming in from the outside. So that's
11:58:09 8 one I sort of neglected to say. I'm sure there are many
11:58:12 9 others.

11:58:14 10 MR. KIERNAN: Q. Many others what?

11:58:16 11 A. Many other things. I mentioned internal
11:58:18 12 equity, I mentioned contributions, but other things that
11:58:22 13 people consider when making pay decisions are how much
11:58:26 14 is one making already, or somewhere else. Or is that
11:58:34 15 person likely to leave the job. Are they more mobile.
11:58:37 16 You know, these are other kinds of features I said
11:58:40 17 before. I gave you a list of some, then I remembered
11:58:42 18 geography, now I'm remembering others.

11:58:46 19 Q. And do you agree that not each manager will
11:58:50 20 consider the same exact factors in determining pay for
11:58:53 21 an individual?

11:58:55 22 MS. DERMODY: Object to form.

11:59:00 23 THE WITNESS: You said would agree would not,
11:59:02 24 so I just want to make sure I've got the -- are you
11:59:05 25 asking me if all managers will use exactly the same

11:59:09 1 criteria for determining compensation? Is that what you
11:59:13 2 are asking?

11:59:16 3 MR. KIERNAN: Q. (Nonverbal response.)

11:59:19 4 A. I think that managers in these organizations
11:59:26 5 were all following a similar structure. They had
11:59:29 6 administrative pay systems, formal pay systems. There
11:59:31 7 was lots of information about communicating to managers
11:59:34 8 how to do that. PowerPoint presentations and other
11:59:39 9 things, as I've mentioned before, in exhibits. Whether
11:59:42 10 every manager was doing it precisely the same way, I
11:59:45 11 can't -- I can't tell for sure.

11:59:50 12 Q. And you've written in your recent textbook
11:59:53 13 about how practice can vary from the actual compensation
11:59:59 14 design. You recall that?

12:00:02 15 A. Practice could vary from the design?

12:00:05 16 Q. Uh-huh. What the managers actually do in
12:00:07 17 practice in making compensation decisions.

12:00:12 18 A. I'm not sure if -- could you show me where I
12:00:18 19 say that?

12:00:19 20 Q. I don't have it with me.

12:00:20 21 A. Okay.

12:00:22 22 Q. Do you agree with that?

12:00:23 23 A. Do I agree with -- that practice can differ
12:00:27 24 from design? I think a framework or a design is set up,
12:00:34 25 but there are certainly instances when people could

12:00:39 1 differ from that design.

12:00:40 2 For example, it's important -- one practice
12:00:46 3 that many firms would like to do is make sure that their
12:00:50 4 compensation systems are gender neutral. So, you know,
12:00:56 5 you wouldn't want to be paying people who are doing the
12:00:58 6 same work differently if they have different gender.

12:01:02 7 There may be a manager who discriminates, and that would
12:01:05 8 be an example of someone who could sort of do different
12:01:09 9 from the structure and, you know, do something
12:01:15 10 inconsistent with the setup. But obviously, you don't
12:01:20 11 want to have happen the circumstance of discrimination.

12:01:25 12 Q. And I probably should have started with this.
12:01:27 13 What do you mean by "formalized pay system"? Actually,
12:01:30 14 strike that.

12:01:31 15 A. Okay.

12:01:31 16 Q. Throughout your report, you mentioned
12:01:33 17 formalized pay system, and then you also used the words
12:01:40 18 formalized compensation system, and then you also used
12:01:43 19 the words formal compensation structure. Are those
12:01:48 20 interchangeable? In other words, do you mean the same
12:01:52 21 thing?

12:01:53 22 A. They're similar, but I want to make sure -- the
12:01:57 23 word structure might be -- in some circumstances,
12:02:00 24 someone might use structure -- they might have something
12:02:02 25 particular in their mind. Those are all very related.

12:02:07 1 Lot of the issues we've been talking about today are
12:02:09 2 related to those -- all of those things.

12:02:15 3 Sometimes structure, though, the word structure
12:02:18 4 is the one that struck me. So can you tell me the other
12:02:21 5 two? One was structure --

12:02:23 6 Q. One is formalized pay system, formalized
12:02:26 7 compensation system and formal compensation structure.

12:02:31 8 A. Okay. So pay and compensation are sometimes
12:02:33 9 used interchangeably.

12:02:35 10 Q. Are you using them interchangeably?

12:02:40 11 A. I'm not always -- depends on a specific -- you
12:02:49 12 know. There is the difference between sometimes folks
12:02:56 13 think that salary is all of compensation, but it could
12:03:00 14 also include bonus or it could include equity, stock.
12:03:06 15 So sometimes compensation or pay is a broader term than
12:03:09 16 salary.

12:03:10 17 The thing that I wanted to focus on is, though,
12:03:13 18 that the word structure, sometimes that could be more
12:03:17 19 associated with one of these pictures like we were
12:03:20 20 talking about before the break. Like figure 7 and other
12:03:22 21 figures that are associated in here. So while they're
12:03:26 22 very similar ideas, I don't want to say they're exactly
12:03:28 23 synonyms, because I think in some circumstance someone
12:03:31 24 might be being more specific with them.

12:03:33 25 Q. Okay. And what do you mean by formalized pay

12:03:38 1 system?

12:03:40 2 A. I mean -- well, again, there are a lot of
12:03:45 3 things that go into a formalized pay system. And that's
12:03:49 4 really what I've started on page -- I think it was 5.
12:03:55 5 There are lots of features that could be things like
12:04:00 6 using market data.

12:04:02 7 So even that, there is a good example that even
12:04:05 8 having a system doesn't mean it's sort of a thing at a
12:04:08 9 place in time, but the feature of using market data is
12:04:11 10 part of a formalized or an involved compensation system.

12:04:19 11 I mean the kinds of things that I'm talking
12:04:21 12 about here on pages 5 through whatever it was, 5
12:04:24 13 through -- mostly throughout the report, really, but
12:04:27 14 that I begin to outline in pages 5 through 15.

12:04:31 15 Q. And is what you are saying that each of the
12:04:34 16 defendants had some system in place to administer
12:04:38 17 compensation?

12:04:40 18 MS. DERMODY: Object to form.

12:04:42 19 THE WITNESS: Is what I'm saying that each one
12:04:44 20 had some system? Sounded like you were saying --

12:04:55 21 MR. KIERNAN: Q. I'm trying to understand
12:04:56 22 your opinion.

12:04:57 23 A. Okay. No, no. I appreciate that.

12:04:57 24 Q. Because you set forth, in paragraphs 10 through
12:05:01 25 44, what you describe as possible features of a formal

12:05:05 1 system, and then in paragraph 45 you state that not each
12:05:09 2 defendant had all of these features.

12:05:11 3 A. Right. No, I understand now.

12:05:13 4 Q. So I'm trying to follow what you mean by formal
12:05:15 5 pay system.

12:05:16 6 A. I thought you were saying, though, the
12:05:18 7 impression that I was just saying that, well, they all
12:05:20 8 have one system or another.

12:05:23 9 They all have -- they all have features of
12:05:28 10 systems that -- and which is what I think is relevant in
12:05:31 11 this case. They have features of systems that lead me
12:05:34 12 to the second part of the assignment, which was they all
12:05:38 13 have features, including following principles of
12:05:43 14 internal equity, including using market survey -- survey
12:05:50 15 data in one way or another. They all have features that
12:05:54 16 lead me to the second conclusion in the report.

12:05:59 17 So they don't have identical systems, as we
12:06:03 18 talked about earlier, but they all have features of
12:06:05 19 those systems that would lead me to the conclusion. And
12:06:09 20 that's why I was, you know, interested in that, really.
12:06:12 21 That first point, the first part of the assignment, is
12:06:16 22 really related to the second point.

12:06:18 23 Q. Is identifying the features that leads you
12:06:23 24 to -- or that form the basis of your second opinion?

12:06:29 25 MS. DERMODY: Object to form.

12:06:30 1 THE WITNESS: I'm sorry. I didn't hear the
12:06:31 2 question. I didn't hear the first part of what you
12:06:34 3 said.

12:06:34 4 MR. KIERNAN: Q. You said the first -- the
12:06:35 5 first point, the first part of the assignment is
12:06:39 6 really related to the second point.

12:06:41 7 A. Yeah.

12:06:41 8 Q. Those were your words.

12:06:43 9 A. Yes.

12:06:44 10 Q. And what I asked was, the first part of the
12:06:48 11 assignment that's related to the second point, is that
12:06:51 12 identifying the features that forms the basis of your
12:06:55 13 second opinion?

12:06:59 14 A. Part of the -- part of the second -- I have
12:07:05 15 lots of opinions. But part of the assignment about
12:07:10 16 whether suppressing wages would lead to suppression --
12:07:16 17 whether these practices would lead to suppression of
12:07:19 18 wages in the firms is related to features of formal pay
12:07:23 19 systems.

12:07:26 20 But just having -- right. Right. I mean,
12:07:37 21 they're obviously related. This is all about
12:07:40 22 compensation.

12:07:56 23 Q. Now, you agree that with a formal pay system,
12:07:59 24 it's likely that not all people doing the same job
12:08:03 25 within a firm are all paid the same salary?

12:09:46 1 So there are people who are basically in the
12:09:47 2 same job who are -- they're not all paid the same
12:09:49 3 salary, even though that's a structure that's very
12:09:54 4 formalized. The state police -- you can imagine a state
12:09:59 5 police structure, I don't know them all, but imagine
12:10:01 6 them looking like figure 1 in this report, which is a
12:10:08 7 government pay grid.

12:10:09 8 Some school teachers with unionized contracts,
12:10:11 9 you can pick out one's wage by knowing their two axes;
12:10:15 10 years of experience and degrees. If you know those two,
12:10:19 11 you know precisely what one is paid at a given point in
12:10:23 12 time. And they're all teachers.

12:10:26 13 Q. Do you agree that the pay for an individual
12:10:28 14 will depend, in part, on how the individual manager
12:10:33 15 weighs the different factors that are relevant to the
12:10:39 16 individual's pay?

12:10:40 17 MS. DERMODY: Object to form.

12:10:45 18 THE WITNESS: Would I agree that -- I would
12:10:47 19 agree that a manager's opinions are certainly a part of
12:10:53 20 what one's pay change will be from one -- one pay time
12:10:56 21 to the next, say, every -- per year. And managers do
12:11:04 22 have some discretion over that. There is certainly --
12:11:11 23 absolutely.

12:11:12 24 MR. KIERNAN: Q. And then different
12:11:14 25 managers can exercise their discretion differently.

12:11:18 1 MS. DERMODY: Object to form.

12:11:23 2 THE WITNESS: Again, as I said in the example I
12:11:24 3 used earlier, it's a stark example, but managers can --
12:11:27 4 sometimes people do things they shouldn't be doing. So
12:11:32 5 one manager could discriminate against a worker or group
12:11:37 6 of workers. And typically in well-functioning
12:11:41 7 organizations that doesn't happen, but that can happen.

12:11:44 8 MR. KIERNAN: Q. But another alternative
12:11:46 9 or possibility is that two managers weigh the same
12:11:50 10 factors differently. Give different weight to the
12:11:52 11 same factors. Isn't that a possibility?

12:11:54 12 MS. DERMODY: Object to form.

12:12:06 13 THE WITNESS: I think -- are you asking me in
12:12:08 14 general? In general, managers make different decisions
12:12:13 15 faced with the same information. So you might be
12:12:15 16 deciding on which two products to launch, and one
12:12:18 17 manager might feel it's important to go with one and one
12:12:21 18 with another.

12:12:22 19 MR. KIERNAN: Q. I don't care about
12:12:23 20 products. I'm talking about compensation.

12:12:25 21 A. So could two managers facing the same
12:12:29 22 information make -- I think on the margins, people might
12:12:34 23 not make precisely the same decision in exactly -- in
12:12:40 24 precisely the same instance, but they're all following
12:12:45 25 an administrative formal structure and protocol.

12:12:48 1 And often there are recommended --
12:12:55 2 recommendations for how to translate pay changes. And
12:13:02 3 there is also a sort of chain of command. There is
12:13:08 4 sometimes a second look on a particular compensation
12:13:10 5 decision.

12:13:14 6 Q. And let's take Adobe. What were the factors
12:13:17 7 that managers at Adobe considered in deciding the
12:13:22 8 compensation for an individual?

12:13:25 9 A. I think Adobe -- what are the factors Adobe --
12:13:30 10 people at Adobe used. I'm just turning to Adobe here to
12:13:35 11 remind myself.

12:13:44 12 Factors included external market data, as they
12:13:46 13 did in all defendant firms. That was one factor.

12:13:49 14 Q. Your opinion is that each and every manager,
12:13:52 15 when making a compensation decision, considered external
12:13:55 16 market data?

12:13:57 17 A. I don't know what each and every manager did.

12:13:59 18 Q. How would you determine that?

12:14:01 19 A. How would I determine what each and every
12:14:03 20 manager did?

12:14:04 21 Q. Yeah.

12:14:07 22 A. I don't know how I'd do that because there are
12:14:09 23 lots of managers.

12:14:10 24 Q. How many?

12:14:14 25 A. I would --

12:14:17 1 Q. Don't guess.

12:14:18 2 A. Yeah. I don't know precisely how many managers
12:14:21 3 there are.

12:14:22 4 Q. Do you know approximately?

12:14:23 5 A. You told me not to guess.

12:14:25 6 Q. That's why I'm asking, do you know
12:14:27 7 approximately?

12:14:29 8 A. I would imagine -- well, there are a lot
12:14:34 9 because work groups can't be too big, because managers
12:14:37 10 need to be supervising a certain -- imagine a hierarchal
12:14:42 11 system. One manager might supervise a certain number of
12:14:46 12 workers, and to do that well the number of workers can't
12:14:50 13 be too large. And you can think about the size of these
12:14:53 14 organizations, number of employees, and sort of make
12:14:54 15 some calculation from that, which I -- I have -- I could
12:14:58 16 ballpark that, but I'd rather not do that.

12:15:01 17 Q. Is one of the things you could do is survey the
12:15:06 18 managers that were making the compensation decisions --

12:15:10 19 MS. DERMODY: Object to form.

12:15:11 20 MR. KIERNAN: Q. -- about the factors that
12:15:15 21 they consider?

12:15:16 22 A. You could survey anybody about anything. But I
12:15:20 23 think that that's not -- I think that's an independent
12:15:25 24 issue to what I was asked to do here. And it doesn't
12:15:33 25 really, I don't think -- I don't know where you are

12:15:34 1 going, but it doesn't impact what I view as the outcomes
12:15:38 2 of my -- of my conclusion. So --

12:15:43 3 Q. How individual managers made the compensation
12:15:46 4 decisions -- hang on -- doesn't impact your opinions in
12:15:53 5 this case?

12:15:57 6 A. If they made them at random, which I don't
12:16:01 7 suspect, it would be one thing. But the fact that
12:16:04 8 individual managers would value a particular outcome or
12:16:08 9 work effort in one way or another could have some
12:16:14 10 modification, but doesn't really change how I -- I'll
12:16:18 11 give you a specific example. I know you are asking
12:16:22 12 about Adobe, but I'll give you another example.

12:16:24 13 Imagine figure 12, which we talked about
12:16:26 14 earlier. These are merit increase measures --

12:16:36 15 (Reporter clarification.)

12:16:36 16 THE WITNESS: -- merit increase matrix
12:16:36 17 measures, and along the vertical axis are performance
12:16:38 18 ratings. And so this has a performance rating of [REDACTED]
[REDACTED] [REDACTED] for Google. There are others. Actually, you are
12:16:47 20 asking me about Adobe.

12:16:50 21 MR. KIERNAN: Q. Go ahead and stick with
12:16:52 22 the Google one, then we can do Adobe.

12:16:54 23 A. I think Adobe is in here too. It is. I think
12:16:57 24 it is.

12:16:58 25 So this is why I want to -- maybe I can better

12:17:02 1 answer your question. A particular manager might

12:17:06 2 give -- these are performance ratings from [REDACTED]

12:17:11 3 Q. Uh-huh.

12:17:12 4 A. I believe, with respect to these figures, that

12:17:14 5 the average was [REDACTED]. It happens to be about in the

12:17:16 6 middle of the figure, but I think it was [REDACTED]

12:17:19 7 You and I might -- both might be managers at a

12:17:22 8 particular company. You might see one of your workers

12:17:29 9 and evaluate that person as a 3.4, and I might evaluate

12:17:32 10 that person as a 3.5. So there are differences that we

12:17:39 11 were making objective and subjective evaluations. We

12:17:42 12 might have slightly different things. Probably be

12:17:45 13 pretty close. But within this structure, there might be

12:17:49 14 a slight modification there. But at the same time, I

12:17:54 15 think that the -- what I'm talking about here still

12:17:57 16 follows through, even if there is a -- certain modest

12:18:00 17 differences there.

12:18:01 18 Q. Assume that two managers give a 3.5 rating to

12:18:09 19 an employee.

12:18:10 20 A. Okay.

12:18:11 21 Q. Okay.

12:18:14 22 A. And there --

12:18:16 23 Q. Go ahead.

12:18:17 24 A. You mean two managers of the same employee, or

12:18:19 25 one manager to one employee and another manager to --

12:18:21 1 Q. Let's do it this way, and we can get more
12:18:23 2 complicated.

12:18:24 3 A. Okay.

12:18:24 4 Q. Let's start with one manager, one employee.

12:18:28 5 A. Okay.

12:18:28 6 Q. At Google.

12:18:29 7 A. All right. I'm going to open this. Sorry.
12:18:33 8 Okay.

12:18:34 9 Q. And the employee has a rating of 3.5 and
12:18:41 10 falls -- let's say falls right at a hundred percent.
12:18:47 11 Actually, let me strike that.

12:18:49 12 Explain what this document means.

12:18:52 13 A. This is -- this is Google's merit -- a Google
12:18:56 14 merit increase matrix, and I cite the original text. I
12:19:06 15 just retyped this. And what I believe this is is on the
12:19:13 16 horizontal -- sorry. On the vertical axis, that is that
12:19:17 17 first column, [REDACTED] through [REDACTED], are ratings. [REDACTED] being
12:19:22 18 low, lower, [REDACTED] being higher. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
12:19:41 22 And I think you were about to say this, but
12:19:43 23 I'll say it. If one is at [REDACTED] percent, that person is in
12:19:49 24 sort of the [REDACTED] of the sort of middle
12:19:56 25 of that range. And if one is at [REDACTED], they're [REDACTED] percent

01:29:55 1 wasn't just one person, one manager, as you've been
01:29:58 2 talking, but someone else weighing in on that kind of an
01:30:03 3 issue.

01:30:03 4 Q. Was that true in each of the defendant
01:30:05 5 companies?

01:30:05 6 A. Was it true that they would have to go to a
01:30:07 7 second person to go outside of the guidelines? I don't
01:30:09 8 know. Or I can't recall those examples at all seven.

01:30:16 9 Q. You mentioned before you distinguish between
01:30:19 10 what the policy is and what the practice might be; why
01:30:23 11 were you making that distinction?

01:30:25 12 A. I was doing the policy and the practice, I
01:30:27 13 think, following the questions you were asking me before
01:30:29 14 lunch about whether, you know, the distinction -- the
01:30:34 15 discussion we had that was related to figure 12, which
01:30:36 16 we've now talked about I think in every segment, which
01:30:44 17 is what a guideline might be and what were the actual
01:30:47 18 pay ranges for each of the employees that we talked
01:30:50 19 about earlier. I was just making the distinction
01:30:54 20 because you brought it up earlier.

01:30:57 21 Q. Did each of the defendant companies use salary
01:31:00 22 ranges?

01:31:00 23 A. Did each one have new salary ranges?

01:31:05 24 Q. Use salary ranges.

01:31:08 25 A. Oh, I'd have to look. I think that -- I'm not

01:31:22 1 sure if everyone did. I'm thinking one example where
01:31:25 2 they might not have actually had a range, but had --
01:31:30 3 were basically using external market data which was
01:31:35 4 reporting ranges. So effectively, did they have a range
01:31:40 5 internally, I'm not sure everyone did, technically. But
01:31:43 6 I think they were still using these same principles.
01:31:47 7 Still using external market data.

01:31:50 8 But I can't remember if every single one had
01:31:53 9 set ranges. I certainly didn't find things like I did
01:31:56 10 for -- there is a picture I -- some data and then a
01:32:02 11 graph. I think it's figures 10 and 11. 10 is the table
01:32:08 12 and 11 is the graph from Apple, I believe. I should
01:32:11 13 check before I say that. Yeah.

01:32:20 14 So what I'm saying is I'm not sure they all had
01:32:22 15 exactly things that look like this, that have job codes
01:32:25 16 and min, mid, max. So I'm not sure that every single
01:32:31 17 one did have exactly that.

01:32:33 18 Q. For purposes of your second opinion that the
01:32:36 19 impact of compensation to some employees could lead to
01:32:40 20 impact to all or nearly all other employees, is it a
01:32:47 21 necessary feature of the formal pay system that the
01:32:52 22 company use salary ranges?

01:32:56 23 A. I think there are -- I want to think about
01:32:59 24 that. I think that there are a variety of ways --
01:33:03 25 variety of reasons where one could come to the

01:33:07 1 conclusion that restricting cold calling could have
01:33:11 2 impacts on workers. And one of those is the structure,
01:33:17 3 but another one might be something like let's say one
01:33:24 4 has a -- so no. Because I can think of -- I can think
01:33:28 5 of other examples.

01:33:29 6 Q. Like just give me examples you have in mind.

01:33:32 7 A. One example I'm thinking of just now is
01:33:36 8 something you might call -- and there is an example of
01:33:41 9 this in here, so let me just -- I'll show you the
01:33:42 10 example first and then I'll tell you so that I can get
01:33:45 11 it right.

01:33:46 12 Someone -- I think it's on the bottom of one of
01:33:49 13 my pages here. It's probably in the internal equity
01:33:58 14 section. And it's someone -- sorry. I think I can
01:34:00 15 answer the question better with a specific example.

01:34:12 16 Someone says 4 percent managing toward 3
01:34:18 17 percent, and I can't really remember where I saw it.

01:34:20 18 (Reporter clarification.)

01:34:20 19 THE WITNESS: Managing toward 3 percent. There
01:34:20 20 is an email to others. If this were searchable, I could
01:34:35 21 find it quickly. If I can't find it in ten more seconds
01:34:42 22 I'll tell the story anyway.

01:34:45 23 MR. KIERNAN: Q. Tell the story and I
01:34:46 24 could probably find it for you pretty quickly.

01:34:49 25 A. There is an email from one person, I thought --

01:34:53 1 I certainly read it, I thought I wrote about it. Where
01:34:57 2 someone said we're looking at salary increase budget of
01:35:00 3 4 percent, but we're managing it to a 3, are any of you
01:35:03 4 other companies doing things like it. Something like
01:35:05 5 that. I can't remember.

01:35:06 6 MS. DERMODY: Would you like the actual
01:35:08 7 paragraph? It's 109.

01:35:09 8 THE WITNESS: 109. I wasn't even close. Okay.
01:35:13 9 I was in the wrong section. So here it is.

01:35:16 10 So here's an example at Pixar, Ms. McAdams sent
01:35:22 11 an email to staff from Lucasfilm, among others. Quick
01:35:25 12 questions from me. For those of you who can share this
01:35:28 13 info, what is your salary increase budget for FY07?
01:35:31 14 Ours is 4 percent, but we may manage it closer to 3
01:35:34 15 percent on average. Are you doing anything close, more,
01:35:37 16 or less?

01:35:38 17 And so what I think, in this email she's doing
01:35:41 18 is, I don't know who she's writing it to, but others,
01:35:44 19 saying we're expecting to basically increase a pay -- we
01:35:52 20 have a budget of about 4 percent. They might be
01:35:54 21 actually doing it more toward 3 percent. I think that's
01:35:56 22 what she means by managing it toward 3 percent. And
01:36:01 23 let's say that you just had your salaries and you had no
01:36:07 24 structures, like the grid I talked about in figures 10
01:36:11 25 and 11.

01:36:14 1 If you were using external information like
01:36:16 2 that, then that kind of information, if those kinds of
01:36:23 3 things -- if suppression caused those numbers to be
01:36:26 4 lower, then that could be translated back to an
01:36:28 5 organization and that could propagate through.

01:36:31 6 So that's just -- an example where even in the
01:36:36 7 absence of a grid like at -- like the ones I was just
01:36:41 8 mentioning from Apple in figures 10 and 11, where this
01:36:45 9 could happen as well.

01:36:58 10 MR. KIERNAN: Q. A company -- strike that.

01:37:35 11 Can you think of any companies, as you sit here
01:37:37 12 today, that have more than 100 employees that don't have
01:37:41 13 a formalized pay system?

01:37:52 14 A. Can I think of companies -- specific companies?

01:37:55 15 Q. Yes.

01:38:17 16 A. I imagine there are many companies that have
01:38:19 17 more than a hundred employees that don't have formalized
01:38:23 18 structures in the same way I'm talking about here with
01:38:24 19 minima, maxima, multiple jobs, external market data. I
01:38:30 20 can think of many.

01:38:31 21 The first thing that occurred to me was -- I
01:38:34 22 mean, not specific companies, but examples of
01:38:37 23 organizations that would do that are small organizations
01:38:40 24 growing up. Imagine a landscaping company that's
01:38:42 25 basically paying people very short-term labor, that sort

01:38:45 1 of thing. They don't have the same kinds of formal
01:38:48 2 structures that these do.

01:38:50 3 There are lots of organizations, I imagine, but
01:38:52 4 specific ones, you know, I'd have to go in and find out,
01:38:55 5 see what they're doing, to see if they're doing this.
01:38:58 6 But I can imagine there are many.

01:39:02 7 Q. And are there degrees of formality? In other
01:39:09 8 words, you know, are some systems more formal than
01:39:14 9 others?

01:39:15 10 MS. DERMODY: Object to form.

01:39:21 11 THE WITNESS: That's an interesting question.
01:39:23 12 I think that some have -- I think more formal. That's
01:39:28 13 what I'm having trouble with, they're sort of formal or
01:39:31 14 they're not.

01:39:32 15 Some have probably more of the hallmark
01:39:34 16 features, some -- but I could imagine that there is some
01:39:42 17 gradation of that in some way, but I'm sort of thinking
01:39:46 18 of you have a formalized system or you don't.

01:39:50 19 MR. KIERNAN: Q. Maybe --

01:39:51 20 A. I should say I think as firms mature, they are
01:39:53 21 probably changing their systems until they have a
01:39:55 22 structure that's used by many leading corporations.

01:40:00 23 Q. Are there pay systems that are more rigid than
01:40:02 24 others?

01:40:03 25 MS. DERMODY: Object to form.

01:40:06 1 THE WITNESS: I don't know what -- what do you
01:40:07 2 mean -- sorry. What do you mean by "rigid"?

01:40:12 3 MR. KIERNAN: Q. That word means nothing
01:40:13 4 to you?

01:40:14 5 MS. DERMODY: Object to form.

01:40:15 6 THE WITNESS: I just -- I know what rigid
01:40:17 7 means.

01:40:18 8 MR. KIERNAN: Q. Okay. Is that a term of
01:40:21 9 art in the field of compensation? A rigid
01:40:29 10 compensation structure?

01:40:32 11 A. Rigid must be used sometimes, but I think it
01:40:35 12 could be in compensation, in HR. But whether it's -- it
01:40:42 13 could mean, with respect to this thing that you were
01:40:44 14 talking about before, how closely do you follow specific
01:40:47 15 rules. Are there -- can exceptions be made.

01:40:54 16 So can you ask the question again? I was
01:40:57 17 focusing on the definition of how you were defining
01:40:59 18 rigid when you asked it.

01:41:00 19 Q. I'm not defining -- the question was, in the
01:41:02 20 field of compensation in which you write, research,
01:41:05 21 teach --

01:41:09 22 A. Right.

01:41:10 23 Q. -- is rigid compensation system, rigid pay
01:41:14 24 system, a term of art or used to describe or categorize
01:41:17 25 certain pay systems?

01:41:19 1 A. I think the -- the term rigid could be used --
01:41:21 2 you know, I think it's like back to what you were asking
01:41:26 3 before; pay versus compensation, formal versus
01:41:29 4 structured. Rigid -- I'm just not sure about rigid.
01:41:34 5 But rigid, could probably use that in a structured
01:41:37 6 sense.

01:41:38 7 Q. Is there a generally accepted definition of
01:41:42 8 rigid or rigidity with respect to compensation
01:41:46 9 structures in your field?

01:41:49 10 A. Again, I don't know if there is some threshold
01:41:52 11 that one would cross to be called rigid versus not, so I
01:41:55 12 don't really know.

01:41:56 13 Q. Any research that you are aware of on that
01:41:58 14 issue?

01:41:58 15 A. Not that I'm aware of.

01:41:59 16 Q. Have you researched the issue?

01:42:01 17 A. Sort of definition of -- no.

01:42:05 18 Q. What does -- or what is a somewhat rigid
01:42:09 19 compensation structure?

01:42:11 20 MS. DERMODY: Object to form.

01:42:13 21 MR. KIERNAN: Q. Strike that.

01:42:15 22 Have you heard of the term "somewhat rigid
01:42:17 23 compensation structure" in the field of -- in your
01:42:21 24 field?

01:42:24 25 A. Somewhat rigid. I may have used the term

01:42:28 1 somewhat rigid pay structure. So I probably have heard
01:42:31 2 of it because I've probably written it somewhere at one
01:42:34 3 point or another.

01:42:35 4 Q. And do you recall where you would use that
01:42:37 5 term?

01:42:38 6 A. I may have used it in here, actually, but I
01:42:40 7 don't know.

01:42:47 8 Q. You don't.

01:42:48 9 A. Okay. You know, just in the sense rigid,
01:42:51 10 formalized, I think they could be synonyms in certain
01:42:54 11 applications of that. So I can't recall any specific
01:42:56 12 examples.

01:42:56 13 Q. And are there any generally accepted standards
01:43:01 14 to -- that you use to determine if a pay system or
01:43:07 15 compensation system is rigid?

01:43:12 16 A. Again, I think that that's a -- I'm thinking
01:43:16 17 about the use of rigid that an engineer would. So there
01:43:19 18 is some probably measure of rigidity. And if it's over
01:43:23 19 some scale or temperature or whatever it is, then
01:43:26 20 therefore it's rigid or not. And I don't think of that
01:43:28 21 in compensation, no.

01:43:31 22 Q. Can you think of any compensation structure
01:43:34 23 that you would consider rigid?

01:43:39 24 MS. DERMODY: Object to form.

01:43:44 25 THE WITNESS: I imagine I could think of a

01:49:50 1 things that are consistent with those. But I hadn't

01:49:52 2 thought about the scale that you are talking about.

01:49:55 3 Sort of asked are these formal systems. I think they

01:49:59 4 are. They are, and not, you know, are they.

01:50:07 5 Q. Where on the continuum are they in each of

01:50:09 6 them, not as a group?

01:50:10 7 MS. DERMODY: Object to form.

01:50:12 8 THE WITNESS: I think that these, you know, in

01:50:15 9 some sense, these systems are -- I write about in the

01:50:19 10 book, formalized -- I talk about the structures in my

01:50:26 11 book, whether I use the word structure or not. There

01:50:28 12 are other textbooks on compensation that people use for

01:50:32 13 these master's level students or undergraduate students

01:50:34 14 who are interested in human resource management.

01:50:39 15 And there are many features of the companies

01:50:40 16 that were studied here that are -- would be perfect

01:50:45 17 cases to teach those things. The use of the minimum and

01:50:50 18 the maximum and the midpoint. The using market data.

01:50:53 19 It's what's taught when one teaches about these systems.

01:50:58 20 MR. KIERNAN: Q. So take Intuit, for

01:51:01 21 example.

01:51:01 22 A. Okay.

01:51:02 23 Q. Give me the things that you would teach

01:51:04 24 about --

01:51:05 25 A. That Intuit does?

01:51:06 1 Q. Uh-huh.

01:51:07 2 A. I think that one example would be the use of
01:51:11 3 external data. I believe that -- as I believe all used
01:51:17 4 external data in one way or another. That's an example.

01:51:21 5 Q. How did Intuit use external data?

01:51:24 6 A. My guess is I have this in here, so I will
01:51:26 7 look. I think that they used -- I remember seeing
01:51:30 8 something at -- I think it's Intuit, where I think I
01:51:41 9 wrote down -- I might have written down which survey.
01:51:44 10 In some of the cases it was disclosed which company
01:51:49 11 survey was used. And let me look, because I think there
01:51:52 12 are at least two pages where I can find Intuit. The
01:51:55 13 first is here.

01:52:02 14 So here I'm actually looking. This isn't what
01:52:04 15 I was thinking of.

01:52:06 16 Q. What are you looking at, Professor Hallock?

01:52:09 17 A. I'm looking at page 27, which is in the section
01:52:14 18 on what I call Defendants had Formalized Pay Systems.

01:52:21 19 In Intuit's case, there is evidence of low, mid
01:52:24 20 and high job codes, families. There is an example of a
01:52:30 21 document listing these codes, which appear to be --
01:52:34 22 could be job codes of one type or another. And the
01:52:38 23 talent director was asked about the codes. He said he
01:52:43 24 uses this for every offer. And it suggests to me that
01:52:47 25 it's -- you got to make an offer, you go, you look, you

01:52:50 1 see how things are looking, and you make an offer.

01:52:52 2 That's kind of a formal system. They're not just saying

01:52:55 3 to the external candidates only, what is your other

01:52:57 4 salary, what were you making before, but that's an

01:53:01 5 example of a formal -- something that's associated with

01:53:05 6 these -- these kinds of systems.

01:53:09 7 Q. If you look down at paragraph 87.

01:53:13 8 A. Yep.

01:53:14 9 Q. In the last line and you are quoting

01:53:18 10 Mr. Stubblefield.

01:53:22 11 A. Uh-huh.

01:53:23 12 Q. You quote, "If we saw attrition in some area,

01:53:26 13 we'd use -- we use retention bonuses proactively to try

01:53:32 14 to secure, lock in, create incentive for other talent to

01:53:35 15 stay."

01:53:36 16 Do you see that?

01:53:37 17 A. I see that quote, yes.

01:53:39 18 Q. And is it your understanding that Intuit

01:53:44 19 managers had at their discretion the ability to pay a

01:53:48 20 bonus to retain particular individuals?

01:53:54 21 A. I'm sorry, could you say it again? I want to

01:53:56 22 know if you said policy.

01:53:58 23 Q. Is it your understanding that Intuit managers

01:54:00 24 had at their discretion the ability to pay bonus to

01:54:04 25 retain particular employees?

01:54:05 1 MS. DERMODY: Object to form.

01:54:06 2 THE WITNESS: I don't know in general, but I
01:54:07 3 know based on this quote that Mr. Stubblefield said if
01:54:10 4 we saw attrition in some area we'd use retention bonuses
01:54:18 5 proactively. So someone was using retention bonuses.

01:54:24 6 MR. KIERNAN: Q. Do you know if all
01:54:25 7 managers at Intuit had that discretion?

01:54:27 8 A. Again, I don't know what all managers had
01:54:28 9 available to them.

01:54:30 10 Q. You are using this as an example, however, that
01:54:33 11 Intuit had a formal pay system, right?

01:54:41 12 A. Well, it's in the section -- let me just make
01:54:43 13 sure -- I want to make sure I'm being careful, seeing
01:54:46 14 where I am.

01:54:47 15 I just want -- it is in the section that had
01:54:50 16 Defendants had Formalized Pay Systems. And one thing
01:54:53 17 that I think is noteworthy in that is that right above
01:55:01 18 that, Mr. Stubblefield said we tried to benchmark every
01:55:05 19 job that we can, which is -- so that's why I'm --

01:55:07 20 Q. So why did you include that sentence?

01:55:10 21 A. Benchmark --

01:55:10 22 Q. No. The sentence if we saw attrition --

01:55:13 23 A. Oh, I thought --

01:55:14 24 Q. -- we may use retention bonuses.

01:55:18 25 No, you switched gears on me. I want to focus

02:05:07 1 men -- in the study it told you where employees were
02:05:11 2 allowed to choose their mix of pay. What was the
02:05:13 3 fraction of men who chose -- what fraction did -- sorry.

02:05:20 4 Among men, what fraction chose -- I'm sorry,
02:05:26 5 I'm having trouble saying it. What was the fraction of
02:05:29 6 total pay that came in the form of salary among men.

02:05:32 7 MR. KIERNAN: Q. Oh, okay.

02:05:33 8 A. You just might want to know the number. I have
02:05:35 9 trouble articulating that. I'm sorry. And what is the
02:05:38 10 fraction among women. And it was higher among women.
02:05:43 11 And then you might want to know whether they're
02:05:45 12 specifically different or not. But it sort of depends
02:05:49 13 on what you are doing. There, it was sort of curious at
02:05:52 14 that stage of that project, very preliminary stage, you
02:05:54 15 know, is there a difference.

02:05:57 16 And so I wouldn't say in general that something
02:06:02 17 has to be significant or not. Depends on what is the
02:06:04 18 context.

02:06:10 19 Q. In using a regression to determine the impact
02:06:26 20 of some action or event, is there some rule of thumb
02:06:32 21 about the required number of observations that one would
02:06:39 22 need to provide a reliable result?

02:06:44 23 MS. DERMODY: Object to form.

02:06:45 24 THE WITNESS: Again, that's a -- you know,
02:06:47 25 there are so many --

02:06:50 1 MR. KIERNAN: Q. Could you have just two
02:06:51 2 observations?

02:06:52 3 MS. DERMODY: Object to form.

02:06:55 4 THE WITNESS: Could you ask the question with
02:06:57 5 the two observations in it?

02:06:59 6 MR. KIERNAN: Q. Yeah. If you used a
02:07:01 7 regression to estimate the impact of some action on
02:07:09 8 a -- let's say compensation, would having just two
02:07:15 9 observations be sufficient?

02:07:18 10 MS. DERMODY: Object to form.

02:07:20 11 THE WITNESS: I'm sure you -- are we
02:07:27 12 controlling for variables in this regression? Well, you
02:07:30 13 can't have more independent variables in the regression
02:07:34 14 than you have observations. So I hope that answered
02:07:38 15 the -- I can't remember what the -- which side of the
02:07:40 16 question --

02:07:41 17 MR. KIERNAN: Q. Yeah. And -- the more
02:07:44 18 observations you have, the more precision you'll
02:07:47 19 have, all things being equal, if the regression is
02:07:52 20 correctly specified?

02:08:03 21 A. You are asking me a bunch of statistical
02:08:04 22 questions, and I'm not -- I'm sort of not sure why. I
02:08:12 23 didn't do any statistics.

02:08:15 24 Q. That's the fun of the deposition.

02:08:17 25 A. Okay. Could you ask the question again.

02:08:21 1 MS. DERMODY: You are correct.

02:08:23 2 THE WITNESS: No, I....

02:08:25 3 MR. KIERNAN: Q. Yeah. I asked --

02:08:29 4 A. Well, let me try to answer the question. I
02:08:31 5 think it was about numbers of observations. I think
02:08:34 6 that given a -- given an increasing -- I think what you
02:08:40 7 are asking is whether increasing observations, generally
02:08:46 8 holding other things constant, might help improve
02:08:49 9 precision. I think that's what you are asking. And I
02:08:51 10 think that's, you know, in a general sense, that seems
02:08:53 11 reasonable.

02:09:00 12 Q. If a company has an informal pay system --
02:09:03 13 you've talked about formal pay systems, now let's talk
02:09:08 14 about a company that has an informal pay system. You
02:09:12 15 follow me? Are you with me?

02:09:16 16 A. Maybe. I don't know where -- what you are
02:09:19 17 going to say.

02:09:20 18 Q. I just want to start with the -- start the
02:09:23 19 question with the predicate that we're going to talk
02:09:25 20 about a company that has an informal pay system.

02:09:29 21 A. Okay. So not the defendants.

02:09:32 22 Q. Or anyone else that has a formal --

02:09:35 23 A. Okay.

02:09:35 24 Q. -- formalized -- what you've described as a
02:09:43 25 formalized pay system.

02:09:44 1 A. Okay.

02:09:45 2 Q. A company with an informal pay system could
02:09:47 3 decide to increase the pay across the board of all the
02:09:50 4 employees in the company; that's a -- is that a
02:09:52 5 possibility?

02:09:55 6 A. Are you asking if a company with an informal
02:09:58 7 pay system could increase the pay of everyone across the
02:10:02 8 company? Sure.

02:10:13 9 Q. Like your landscaping example. There were 30
02:10:16 10 landscapers, and they have an informal pay system. The
02:10:22 11 owner could decide I'm going to increase everybody's pay
02:10:27 12 by 10 percent.

02:10:28 13 A. I could imagine a circumstance where -- yeah.
02:10:32 14 That's an example where that could happen.

02:10:36 15 Q. And doing so doesn't make it a formal pay
02:10:38 16 system?

02:10:42 17 A. I don't think -- no. A landscaper, all of --
02:10:49 18 make sure I understand your point. A landscaper
02:10:53 19 increasing the pay of everyone in his or her landscaping
02:10:56 20 business by 10 percent doesn't imply that it's -- that
02:11:03 21 alone wouldn't imply that it's a formal pay system.

02:11:58 22 Q. Go to paragraph 188 of your report.

02:12:04 23 A. 188?

02:12:05 24 Q. Yeah. Thanks.

02:12:09 25 A. Okay. I'll try to remember which section this

02:15:05 1 Google in figure 12. There are also things that are
02:15:08 2 consistent with that, I think for Adobe, in 13. I think
02:15:12 3 perhaps for Adobe in 15, for Apple in 14, for Intel in
02:15:16 4 16.

02:15:17 5 But there are also some other kinds of things
02:15:20 6 that don't come in such a tabular way that are
02:15:23 7 consistent with those two things at the same time. This
02:15:26 8 section, as you pointed out before, is Internal Equity
02:15:29 9 and Pay for Performance Are Not Mutually Exclusive. But
02:15:33 10 there is evidence in others that it just wasn't in a
02:15:36 11 tabular form.

02:15:42 12 Q. And I've noticed I've gone back and forth
02:15:45 13 between doctor and professor; do you prefer one or the
02:15:47 14 other?

02:15:48 15 A. Call me whatever you like. Kevin is perfectly
02:15:50 16 fine.

02:15:53 17 Q. Okay. Fair enough.

02:15:54 18 So you've --

02:15:55 19 A. Don't call me Bob.

02:15:59 20 MS. DERMODY: That was that guy over there.

02:16:02 21 THE WITNESS: No offense to Bobs. I just
02:16:04 22 meant -- I thought of my brother's name, so....

02:16:11 23 MR. KIERNAN: Q. The second question that
02:16:12 24 you addressed is whether the impact on compensation
02:16:16 25 of some employees could lead to impact onto

02:16:21 1 nearly -- to all or nearly all employees of each
02:16:24 2 defendant company.

02:16:25 3 A. The second question was on the -- the first
02:16:27 4 question was on the -- the first question was on the
02:16:35 5 formalized administrative pay system and the second was
02:16:40 6 on whether suppression -- suppression of the -- you
02:16:49 7 know, the no-cold-call agreements could be -- could have
02:16:55 8 suppressive effects on wages. Yes.

02:16:58 9 Q. Okay. And I want to understand how your theory
02:17:02 10 works, and so let's start with Intel. And I want to
02:17:10 11 understand with respect to Intel, and then we can do the
02:17:14 12 other defendants since, as you noted, they do not have
02:17:17 13 identical pay systems, how an impact of some employees
02:17:22 14 at Intel could lead to an impact to all or nearly all
02:17:28 15 Intel employees.

02:17:31 16 And your opinion is not limited, as I
02:17:33 17 understand, to the technical class; is that right?

02:17:37 18 A. Um....

02:17:37 19 Q. In other words, you've reached an opinion that
02:17:39 20 all Intel employees could be impacted if some employees
02:17:45 21 at Intel were impacted?

02:17:48 22 A. That's not precisely what I said. Because you
02:17:52 23 said Intel both -- you know, what I said was that
02:18:05 24 restrictions on cold calling clearly had impacts on
02:18:08 25 employees among defendant firms.

02:18:11 1 Q. Right. Keep reading.

02:18:12 2 A. In particular, restrictions on cold calling
02:18:15 3 hamper compensation levels for employees, and the
02:18:17 4 restrictions could be expected to hamper levels of
02:18:20 5 compensation for those who would have been cold called
02:18:23 6 and for all or nearly all salaried employees of
02:18:26 7 defendant firm. So that I think is what you were
02:18:28 8 referring to.

02:18:30 9 Q. That's right.

02:18:30 10 A. I just -- you said it a little bit differently
02:18:33 11 and I just wanted to make clear that this is what I
02:18:36 12 said.

02:18:37 13 Q. Right. But -- and then later in your report
02:18:39 14 you note that you're reaching an opinion that it could
02:18:47 15 impact all or nearly all salaried employees including
02:18:50 16 the technical class.

02:18:52 17 A. That's right. There is a section I write on
02:18:54 18 the technical class. I refer to the technical class in
02:18:59 19 some parts of the report.

02:19:02 20 Q. During the time period in which you were
02:19:05 21 examining, the 2005 to 2009 period, how many employees
02:19:10 22 were at Intel?

02:19:14 23 MS. DERMODY: Object to form.

02:19:15 24 THE WITNESS: Again, I can't remember the --
02:19:17 25 I'm just guessing -- I would be guessing again. We

02:19:21 1 talked about this earlier on the size of -- I think we
02:19:23 2 talked about this earlier -- on the size of the
02:19:25 3 organizations. And they varied in terms of the number
02:19:28 4 of employees, considerably.

02:19:33 5 So I can't -- I can't tell you precisely how
02:19:38 6 big the employee base was at Intel at a particular time,
02:19:41 7 or over that time specifically.

02:19:48 8 MR. KIERNAN: Q. And with respect to
02:19:48 9 Intel, what is the basis for your opinion that an
02:19:53 10 impact to some employees could lead to an impact to
02:19:56 11 all or nearly all salaried employees of Intel?

02:20:01 12 A. There are a variety of reasons why the
02:20:10 13 restrictions on cold calling could impact -- could have
02:20:15 14 suppressive effects on wages of all or nearly all
02:20:21 15 employees.

02:20:22 16 Q. List them for me.

02:20:23 17 A. Among them are -- this is a hypothetical
02:20:33 18 example. I'm not sure if I have an example in here for
02:20:35 19 Intel. But an example might be that there is -- because
02:20:43 20 of equity concerns, if one person has pressure on her
02:20:48 21 wage it might lead to pressure on wages of the other
02:20:52 22 people in the work group.

02:20:53 23 So let's say a bunch of people are earning
02:20:57 24 \$100,000. If one person is offered a big outside offer,
02:21:03 25 and the employer matches it or at least increases their

02:21:07 1 wage, to the extent that she's in the same work group or
02:21:09 2 doing the same kinds of things, there might be pressure
02:21:11 3 to move it up. So there is one example.

02:21:14 4 Q. One example of what could happen in a
02:21:16 5 hypothetical world.

02:21:17 6 A. Absolutely. Yeah.

02:21:18 7 Q. Okay.

02:21:18 8 A. That's one example. And it happened in
02:21:20 9 these -- there is evidence of this in these firms.

02:21:24 10 Q. Okay. Stop right there.

02:21:25 11 A. Okay.

02:21:26 12 Q. For Intel, identify the example that you are
02:21:28 13 referring to.

02:21:29 14 A. Okay.

02:21:29 15 Q. Where the impact of compensation to one person
02:21:34 16 caused someone else's compensation to be raised.

02:21:40 17 A. I don't have here -- I don't know. I may have
02:21:42 18 in here of that. But I'm telling you why this is the
02:21:46 19 distinction I think you were making before. I'm asking
02:21:49 20 about could something be expected to happen and you are
02:21:52 21 asking me did it happen.

02:21:54 22 Q. What does that mean could it be expect -- I
02:21:57 23 notice in the body of your report you say nearly --
02:22:02 24 actually not nearly -- every time you write it could
02:22:06 25 happen. And then the summary opinions you say could be

02:22:10 1 expected to happen. What's the difference?

02:22:14 2 A. I think there -- I would have to look at
02:22:16 3 exactly the differences in the two passages, but these
02:22:19 4 are -- they're both talking about sort of making a
02:22:22 5 prediction about something versus what you were talking
02:22:24 6 about earlier, did something actually happen. And I
02:22:27 7 think that's a distinction we've been talking about in
02:22:29 8 many of your questions.

02:22:38 9 Q. Okay. So you are making a prediction of
02:22:40 10 whether or not it could happen?

02:22:43 11 A. I'm -- I was asked to determine whether
02:22:48 12 suppressing wages, including technical workers, were
02:22:55 13 basically predicted to lead to suppression of wages.

02:23:00 14 Q. Then in your report, you opine that it could
02:23:03 15 happen?

02:23:05 16 MS. DERMODY: Object to form.

02:23:07 17 THE WITNESS: No, I actually talk about it. I
02:23:09 18 use the same words, I think, where I say are predicted.
02:23:21 19 I'm looking on page 4, for example.

02:23:24 20 MR. KIERNAN: Q. Okay. And what do you
02:23:25 21 mean by that? They are predicted to happen -- I
02:23:30 22 mean, they are predicted to suppress the
02:23:32 23 compensation of all or nearly all members of
02:23:35 24 plaintiffs' proposed technical class?

02:23:40 25 A. I think this is what we talked about earlier.

02:23:42 1 That based on what I know about compensation, how I've
02:23:46 2 been thinking about this for the last, I don't know if
02:23:48 3 it's 22 or 24 years, that given the evidence that I have
02:23:55 4 here, having read these six feet, had access to read all
02:24:04 5 these depositions, what is -- what is the predicted
02:24:10 6 outcome.

02:24:12 7 You've talked about testing the outcome, but --
02:24:16 8 and talked about statistics and things, but that's not
02:24:18 9 what I was asked to do. I think that's an independent
02:24:21 10 question.

02:24:21 11 Q. Okay. So with respect to Intel, when you opine
02:24:30 12 that an impact to some employees, you are saying that
02:24:36 13 your opinion is that it's predicted that there would be
02:24:41 14 an impact to all or nearly all Intel employees?

02:24:45 15 A. Yeah. I -- I think -- what I'm saying is
02:24:51 16 agreements against cold calling can have -- are
02:24:58 17 predicted to have suppressive effects, or just -- I'm
02:25:01 18 using the words I'm using here so I'm not -- are
02:25:04 19 predicted to suppress the compensation.

02:25:06 20 Q. Well, you can change the words if they're not
02:25:08 21 accurate.

02:25:08 22 A. No, no, it's the same thing. I just wanted to
02:25:11 23 be clear.

02:25:12 24 Q. Predicted and could are the same thing in your
02:25:14 25 mind?

02:25:14 1 MS. DERMODY: Object to form.

02:25:15 2 THE WITNESS: No, I was using the word
02:25:17 3 suppress. I was worried about saying suppress.
02:25:18 4 Suppressive versus --

02:25:19 5 MR. KIERNAN: Q. In the sentence you said
02:25:21 6 could and then you switched to predicted. So
02:25:22 7 that's --

02:25:23 8 A. I'm just looking at this sentence now.

02:25:25 9 Q. Okay.

02:25:25 10 A. And say that the agreements against cold
02:25:27 11 calling are predicted to suppress the compensation of
02:25:31 12 all or nearly all members of the plaintiffs' proposed
02:25:35 13 technical class.

02:25:36 14 You were asking about a specific case. And
02:25:41 15 there are -- there are multiple reasons, given the way
02:25:45 16 these systems are set up, that one would -- there are
02:25:49 17 multiple reasons why one would predict the agreements
02:25:58 18 against cold calling would lead to suppression of wages.

02:26:02 19 Q. And they're all set forth in your report?

02:26:05 20 A. They are -- among them are the -- make sure
02:26:18 21 that they are all set forth in the report.

02:26:21 22 One has to do with this -- this internal equity
02:26:25 23 concerns within a group. One has to do with using
02:26:30 24 external market data. And if the external market data,
02:26:34 25 for example, this is another example, are suppressed,

02:26:40 1 bringing those back could lead to further supression.

02:26:44 2 Another example is the salary increases.

02:26:46 3 Salary increases we just talked about earlier. We
02:26:50 4 talked about a lot of things earlier, but that was one
02:26:57 5 we talked about earlier with respect to the person who
02:27:00 6 talked about the 4 percent managing to 3 percent.

02:27:03 7 Q. Let's start -- well, go back to Intel.

02:27:05 8 A. Okay.

02:27:06 9 Q. And let's take a -- do you know how many job
02:27:11 10 titles there were at Intel?

02:27:15 11 A. I can look to see. I don't know if I know how
02:27:20 12 many job titles are at Intel.

02:27:21 13 Q. Would it matter to your analysis of whether an
02:27:26 14 impact to compensation of some employees would impact --
02:27:29 15 could be predicted to impact the compensation of all or
02:27:33 16 nearly all employees?

02:27:44 17 A. Would knowing the number of job titles have an
02:27:48 18 impact on my --

02:27:50 19 Q. Your prediction.

02:27:50 20 A. -- on my prediction? No.

02:27:58 21 Q. It wouldn't?

02:28:00 22 MS. DERMODY: Object to form.

02:28:03 23 Are you arguing with him?

02:28:04 24 MR. KIERNAN: I'm not. I want to make sure I
02:28:06 25 understand his answer.

02:28:08 1 MS. DERMODY: You said, "It wouldn't?" That's
02:28:09 2 not really asking to understand, Mr. Kiernan.

02:28:13 3 MR. KIERNAN: It's beyond objection to form.
02:28:14 4 Stop coaching the witness. Stop coaching the witness.

02:28:17 5 THE WITNESS: What is the question?

02:28:18 6 MR. KIERNAN: You guys wanted that rule.

02:28:21 7 Q. My question is, it would not impact your
02:28:25 8 prediction, the number of job titles, at Intel?

02:28:31 9 MS. DERMODY: Object to form.

02:28:35 10 THE WITNESS: My prediction is that the
02:28:41 11 arrangements in this case, the anti no-cold-calling
02:28:47 12 agreements, are predicted to have suppressive effects.
02:28:54 13 And whether -- I'm making a prediction about there are
02:29:01 14 suppressive effects. I am not making a prediction
02:29:04 15 about -- yeah.

02:29:07 16 So I'm just making a prediction about
02:29:09 17 suppressive effects. So whether they're X or two times
02:29:12 18 X wouldn't change whether I predict that that would have
02:29:16 19 suppressive effect.

02:29:16 20 MR. KIERNAN: Q. But you're predicting two
02:29:19 21 effects, right? You are predicting that the
02:29:21 22 agreements would impact the people who didn't
02:29:24 23 receive a cold call because of the agreements, and
02:29:27 24 you are also predicting that it would impact all or
02:29:31 25 nearly all employees at Intel. Is that accurate?

02:55:13 1 like this where one was asked to, A, think about whether
02:55:20 2 there are formal systems and, B, think about whether
02:55:23 3 restrictions on cold calling could lead to this
02:55:30 4 suppression of compensation.

02:55:33 5 So it's not -- there aren't lots of examples of
02:55:37 6 this happening. At the same time, I'm basing this on my
02:55:40 7 knowledge of how these systems work. That's what I --

02:55:44 8 MR. KIERNAN: Q. Are you --

02:55:45 9 A. That's what I research and teach.

02:55:46 10 Q. Are you aware of any cases in which a plaintiff
02:55:50 11 or some party alleged that some conduct caused
02:55:57 12 compensation of employees to be lower than they
02:56:00 13 otherwise would have been but for the conduct?

02:56:06 14 A. I'm imagining a case -- not a specific case in
02:56:10 15 mind, but I'm imagining examples of labor market
02:56:13 16 discrimination based on gender, for example, that we
02:56:15 17 talked about earlier. If there was some sort of
02:56:18 18 culture, or whatever it is, where people were improperly
02:56:29 19 operating to impact one group versus another.

02:56:32 20 But again, I'm not -- if you are asking about
02:56:34 21 my legal experience, I talked about the three -- this is
02:56:38 22 my third deposition.

02:56:41 23 Q. Well, I asked you if there were generally
02:56:42 24 accepted procedures --

02:56:46 25 A. Yeah.

02:56:46 1 Q. -- to determine whether an impact to some
02:56:49 2 employees would impact others. Okay? And you said you
02:56:53 3 weren't aware of any and this was the first case.

02:56:56 4 A. No.

02:56:56 5 MS. DERMODY: Object to form.

02:56:58 6 THE WITNESS: No, I don't think I said that. I
02:57:00 7 said I'm using precisely those procedures, techniques
02:57:06 8 and methods that one would do to do this. I don't know
02:57:12 9 of another example exactly like this, so this is what
02:57:14 10 I -- this is what I did.

02:57:16 11 MR. KIERNAN: Q. And are there any
02:57:17 12 textbooks, treatises or articles that describe the
02:57:20 13 methodology, procedures that you used in this case
02:57:24 14 to answer the question?

02:57:26 15 A. There are many -- I cite some examples of
02:57:31 16 textbooks, or books, that use -- discuss the
02:57:39 17 compensation systems, which is really what this is
02:57:42 18 about, which is how these compensation systems are
02:57:44 19 structured. And so, in fact, one of those books is the
02:57:49 20 book that we mentioned -- that we talked about earlier
02:57:52 21 called "Pay" from 2012. Another of those is a book
02:57:59 22 called "Compensation" by three other authors.

02:58:03 23 Q. Is it your testimony that both those books set
02:58:06 24 out procedures to determine whether or not -- strike
02:58:12 25 that.

02:58:13 1 Is it your testimony that those two books set
02:58:15 2 forth procedures to determine whether employees'
02:58:22 3 compensation was impacted by some conduct?

02:58:29 4 A. No. Those textbooks describe the compensation
02:58:34 5 systems, but this is a -- this is a new example. And an
02:58:38 6 application of academic and practical work is precisely
02:58:45 7 what's required to answer the questions in the case.

02:58:47 8 Q. Are you aware of any generally accepted
02:58:49 9 procedures to determine whether some conduct or action
02:58:54 10 impacted employee compensation?

02:58:57 11 MS. DERMODY: Object to form.

02:59:04 12 THE WITNESS: Again, I -- am I aware of
02:59:09 13 procedures where some conduct impacted compensation.

02:59:14 14 MR. KIERNAN: Q. To -- just so the
02:59:16 15 question is clear --

02:59:17 16 A. I'm sorry.

02:59:17 17 Q. -- to determine whether the conduct caused an
02:59:21 18 impact to compensation of employees.

02:59:25 19 MS. DERMODY: Object to form.

02:59:31 20 THE WITNESS: Again, I think what you are
02:59:32 21 asking is the question of the testing of the impact,
02:59:36 22 trying to detect it. Is that what you are asking?
02:59:40 23 Trying to understand.

02:59:41 24 MR. KIERNAN: Q. Well, let's start with
02:59:42 25 that.

02:59:45 1 A. I mean, I think people use statistical analyses
02:59:48 2 to do those things.

02:59:49 3 Q. Do you know?

02:59:51 4 A. Do I know?

02:59:52 5 Q. Do you know? You said you think. But do you
02:59:54 6 know what the generally accepted procedures are to
02:59:58 7 determine whether some conduct impacted employee
03:00:03 8 compensation?

03:00:08 9 A. The reason I pause is because clearly
03:00:11 10 statistical techniques would be used if we're talking
03:00:20 11 about trying to measure impacts. And precisely which of
03:00:23 12 those techniques would be used would depend on precisely
03:00:28 13 what kind of situation we're talking about.

03:00:34 14 Q. And --

03:00:35 15 A. That's why I said broadly -- broadly
03:00:38 16 statistical. I would imagine statistical measures would
03:00:40 17 need to be used if one were trying to measure the
03:00:42 18 magnitude of some impact.

03:00:44 19 Q. And I'm not talking about measuring the
03:00:46 20 magnitude of some impact. I'm talking about to
03:00:49 21 determine whether there was impact. Maybe that means
03:00:52 22 the same thing to you, but I want to make sure the
03:00:55 23 record is clear.

03:00:56 24 I mean in the first instance --

03:00:59 25 A. Well I --

03:04:00 1 and '90s at the time, the -- showed that the average
03:04:09 2 effect -- the average CEO pay was higher in firms that
03:04:15 3 had made a layoff than in firms that had not. But there
03:04:18 4 are other things that are correlated with that with CEO
03:04:23 5 pay; for example, firm size.

03:04:26 6 So again, this is just a statistical study.
03:04:29 7 That study is from a long time ago. 1998. That's when
03:04:35 8 it was published.

03:04:53 9 Q. In this -- if I wanted to look for a book or an
03:04:59 10 article to find what procedures to follow to make a
03:05:07 11 prediction of whether some conduct would impact
03:05:12 12 compensation, what text or books, articles, would I go
03:05:18 13 to?

03:05:24 14 MS. DERMODY: Object to form.

03:05:25 15 THE WITNESS: In this case I used books,
03:05:26 16 including -- in this case, for the purposes of
03:05:30 17 considering the questions that were posed to me, I used
03:05:34 18 books, including my own book. And -- which I know well,
03:05:41 19 and another book by Milkovich, Gilman and Gearhart,
03:05:45 20 which is a common textbook used.

03:05:49 21 MR. KIERNAN: Q. I read them both.

03:05:52 22 A. Oh, you did.

03:05:53 23 Q. And that's why I'm asking questions. Because
03:05:54 24 I'm thinking about what chapters to look at again,
03:05:59 25 because I don't recall them, the procedures that I would

03:06:01 1 follow to -- if analyzing the question of whether
03:06:10 2 conduct -- some conduct is predicted to impact employee
03:06:19 3 compensation.

03:06:21 4 A. Again, I think that those books, and others,
03:06:23 5 describe a framework that's important for compensation
03:06:28 6 and discuss lots of issues, including formalized
03:06:33 7 compensation systems, issues like international
03:06:35 8 compensation, many other issues.

03:06:37 9 But this is a specific -- neither of those
03:06:42 10 books talks about an example of how would one consider
03:06:49 11 the impacts of no-cold-call agreements, nor do they
03:06:59 12 consider many other interesting issues in compensation.
03:07:02 13 They're books. They're talking about important aspects
03:07:05 14 of compensation, but certainly not all. There are more
03:07:10 15 books to be written.

03:07:12 16 Q. When you say that impact on compensation of
03:07:17 17 some employees is predicted to lead to impact to some --
03:07:23 18 or to all or nearly all of the technical class, what do
03:07:26 19 you mean by predicted?

03:07:29 20 A. Again, I don't say that exactly in the same
03:07:32 21 words, but I say I believe the agreements against cold
03:07:34 22 calling are predicted to suppress compensation. Maybe I
03:07:38 23 do say it, but I'm looking at another sentence.

03:07:42 24 What I mean is --

03:07:47 25 Q. Let's just -- I want to make sure that the

03:07:48 1 record is clear.

03:07:49 2 A. Okay.

03:07:50 3 Q. You pointed me to paragraph 8.h.

03:07:53 4 A. That's what I'm looking at.

03:07:55 5 Q. Right. Page 4. And you were noting to me, you

03:07:57 6 are making the distinction that you didn't only say

03:08:01 7 could or could be expected, that you went and said

03:08:04 8 predicted. So I want to know what you mean by the word

03:08:07 9 "predicted."

03:08:11 10 A. Okay. I was just trying to clarify another

03:08:13 11 point, but I can talk about predicted. Predicted is

03:08:16 12 what it is. That given my knowledge of compensation,

03:08:19 13 based on what I've written in the book, my columns,

03:08:26 14 which are trying to link compensation research and

03:08:29 15 practice, what I know about these systems, how I teach

03:08:33 16 students who then go and work in and help design these

03:08:35 17 systems, that I predict that agreements against cold

03:08:45 18 calling are predicted to suppress the compensation of

03:08:50 19 all or nearly all members of the plaintiffs' proposed

03:08:54 20 technical class. So I'm not --

03:08:56 21 Q. Including those with different job titles?

03:08:58 22 A. I'm sorry. Including those with different job

03:09:00 23 titles.

03:09:03 24 And it's my prediction. Like you said before,

03:09:07 25 I don't have data on every manager decision, every

03:09:12 1 employee decision. I am -- I'm talking about a
03:09:16 2 prediction.

03:09:29 3 Q. So define for me what you mean by "prediction."
03:09:34 4 In other words, don't assume I know what you mean,
03:09:36 5 because I don't.

03:09:41 6 Is that different from could?

03:09:51 7 A. I think "could" and "predicted" are very
03:09:54 8 similar words. But, you know, I predict this has
03:10:00 9 happened, given what I know about the structures, about
03:10:03 10 how compensation systems work, I believe that these
03:10:07 11 agreements are predicted to suppress compensation.

03:10:21 12 MS. DERMODY: You can keep going.

03:10:22 13 THE WITNESS: Maybe -- I don't know if this is
03:10:24 14 helping what you are asking, is I think I'm trying to
03:10:26 15 make a difference -- a distinction by using the word
03:10:29 16 prediction. You asked me to define or talk about
03:10:36 17 prediction. I don't have the outcome. I haven't seen
03:10:38 18 what happened. So that's what you were asking me about
03:10:40 19 before, I think, making the point. But that's
03:10:42 20 consistent with this, that I --

03:10:44 21 MR. KIERNAN: Q. I see. So you are not
03:10:46 22 saying that it would necessarily lead to the
03:10:47 23 suppression of compensation of all or nearly all
03:10:53 24 members of plaintiffs' proposed technical class?

03:10:56 25 A. I don't want to use a double negative. That's

03:10:57 1 not --

03:10:57 2 MS. DERMODY: Excuse me. Object to form.

03:10:59 3 THE WITNESS: That's not not what I was saying,

03:11:01 4 I think. I want to be clear. What I'm saying is I'm

03:11:09 5 making a prediction, and I didn't measure these things.

03:11:14 6 As I say, in fact, I say it's consistent with your

03:11:16 7 question did you have the data. I say in the same

03:11:19 8 paragraph, I think, in fact, I've not been asked to

03:11:23 9 estimate the magnitude of damages. That I predict that

03:11:27 10 the agreements against cold calling -- I believe the

03:11:31 11 agreements are predicted to suppress compensation.

03:11:36 12 So the difference between prediction and

03:11:39 13 knowing is measuring. And I wasn't asked to estimate

03:11:43 14 those things. I didn't have the -- as you said, I

03:11:46 15 didn't have information on individual pay decisions or

03:11:50 16 compensation levels for all the members of the

03:11:53 17 companies.

03:12:10 18 MR. KIERNAN: Q. So with respect to your

03:12:12 19 prediction, what level of confidence? Is it 2

03:12:19 20 percent confidence? 50 percent?

03:12:28 21 A. I'm not really sure what you mean. So this is

03:12:33 22 a prediction. I'm making a prediction. I'm not putting

03:12:37 23 precision around an estimate after I've made an

03:12:40 24 estimate, which I think you were asking about earlier, a

03:12:42 25 standard error. This is my prediction. Sort of based

03:12:44 1 on my knowledge of these systems and these structures, I
03:12:47 2 predict this.

03:13:37 3 Q. Let me hand you what's been previously marked
03:13:41 4 Horner 1250. Actually, let's go ahead and mark this
03:13:44 5 Defendants' 2, please. That's easier.

03:13:57 6 (Whereupon, Exhibit 2 was marked for
03:13:57 7 identification.)

03:14:25 8 MR. KIERNAN: Q. I'll give you a chance to
03:14:26 9 review it. Do you recognize this document?

03:14:35 10 A. I believe I've seen at least part of this,
03:14:38 11 but --

03:14:39 12 Q. If you go to paragraph 113.

03:14:41 13 A. I was going to say, I'd like to look to see
03:14:43 14 where I referenced it. Is this Adobe?

03:15:06 15 Yes. I'm referencing this on page 34 of my
03:15:10 16 report. Looks like, to me.

03:15:20 17 Q. I notice here you cite to the deposition of
03:15:23 18 Digby Horner that references [REDACTED]. And this, I'll
03:15:27 19 represent to you, is the exhibit that he was being
03:15:29 20 questioned about.

03:15:31 21 Did you review this exhibit when you were
03:15:34 22 writing this paragraph?

03:15:37 23 A. Yeah.

03:15:39 24 Q. Okay.

03:15:40 25 A. Well, in the sense that I may have actually

03:15:43 1 written down this quote, and then typed the quote in. I
03:15:48 2 might not have been reviewing it at that point.

03:15:51 3 Q. Sure. Fair enough.

03:15:52 4 A. For some of these I wrote them directly from --
03:15:57 5 from the exhibits, and from some I was writing from
03:15:59 6 notes. But the note process was taking too long and I
03:16:03 7 switched.

03:16:05 8 Q. Okay. So [REDACTED] works at Adobe; is that your
03:16:10 9 understanding?

03:16:11 10 A. I'd have to look back at it again.

03:16:35 11 It looks like it, because this looks to be --
03:16:38 12 I'm assuming this is emails among employees from Adobe
03:16:42 13 talking about [REDACTED]. And it says a no-brainer to
03:16:46 14 retain [REDACTED] so I'm assuming that he was there at the
03:16:48 15 time. But I'm not -- you know, that looks like it from
03:16:51 16 what I've read, based on that. Okay.

03:16:54 17 Q. Right. And according to this email, [REDACTED]
03:17:01 18 got a raise after they learned that he'd interviewed
03:17:07 19 with four companies, and he also noted that his college
03:17:11 20 friends were making \$15,000 more per year than he is.
03:17:15 21 Is that your understanding?

03:17:25 22 A. I'm not sure -- I don't know about the college
03:17:27 23 friends.

03:17:28 24 Q. If you go to page 2.

03:17:29 25 A. Okay. Okay. He has college friends that work

03:25:31 1 MR. KIERNAN: Q. Now you are using could.

03:25:32 2 I understand anything could happen.

03:25:34 3 A. Okay.

03:25:37 4 Q. I could get hit right now by a meteor. What I
03:25:40 5 want to focus on is what you are predicting. Your
03:25:44 6 opinion is because of a formalized pay system at Adobe,
03:25:48 7 that an impact on compensation of some employees is
03:25:52 8 predicted to lead to an impact on compensation of all or
03:25:56 9 nearly all technical class employees.

03:26:00 10 So looking at [REDACTED] using the same job
03:26:04 11 title of all these other people, what's your prediction?

03:26:10 12 MS. DERMODY: Object to form.

03:26:12 13 THE WITNESS: I'd want to think about that more
03:26:14 14 carefully and know more about these individuals. I
03:26:17 15 think, again, this example is a subset. In fact, I
03:26:20 16 called out this example because it -- it discusses
03:26:24 17 principles of internal equity. I think that's why I was
03:26:29 18 doing it in this section. Yeah.

03:26:32 19 And individual instances of this, again, I
03:26:34 20 haven't looked at the individual instances. But if
03:26:37 21 there are -- if there is wage suppression in the market
03:26:40 22 data that can have translative effects -- if that's a
03:26:46 23 word, I'm sorry -- if that can translate into
03:26:49 24 suppression throughout the system.

03:26:54 25 MR. KIERNAN: Q. What do you understand

03:26:55 1 would be the but-for world?

03:26:58 2 MS. DERMODY: Object to form.

03:26:59 3 THE WITNESS: I'm not sure what you mean by the
03:27:01 4 but-for world.

03:27:02 5 MR. KIERNAN: Q. Not familiar with that
03:27:03 6 term?

03:27:04 7 A. I am, sort of. I think you mean the
03:27:06 8 counterfactual. Is that what you mean?

03:27:09 9 Q. Yeah. So with Adobe, in the but-for -- who did
03:27:13 10 Adobe have an alleged agreement with?

03:27:15 11 MS. DERMODY: Object to form.

03:27:18 12 THE WITNESS: I think what you mean is the
03:27:20 13 but-for world is in the world where there are no
03:27:23 14 agreements.

03:27:23 15 MR. KIERNAN: Q. Right. Although my last
03:27:26 16 question is who -- which company did plaintiffs
03:27:32 17 allege Adobe had an agreement that restricted cold
03:27:37 18 calling?

03:27:37 19 A. I can't remember the details of who Adobe had
03:27:40 20 an agreement with.

03:27:42 21 Q. Okay. Does it matter to your analysis?

03:27:44 22 A. That doesn't matter to the -- to the
03:27:47 23 conclusion.

03:27:49 24 Q. Does it matter how many cold calls Adobe would
03:27:55 25 have received from that company in the but-for world?

03:28:06 1 A. There are two things there. My prediction is,
03:28:12 2 again, that in the presence of the cold calling
03:28:16 3 agreements, there were suppressive effects. That I
03:28:20 4 would predict there to be suppressive effects on wages.
03:28:25 5 And you're asking about the frequency of the cold
03:28:29 6 calling? Just trying to --

03:28:32 7 Q. I'm asking you whether the frequency of the
03:28:35 8 cold calling would impact your opinion.

03:28:37 9 A. The frequency of the cold calling in what way?

03:28:44 10 Q. The -- how would it impact your opinion, if at
03:28:46 11 all?

03:28:47 12 A. The frequency of cold calling at Adobe or among
03:28:49 13 all defendant firms or cold calling in general?

03:28:53 14 Q. No, no, between Adobe -- I'm only talking about
03:28:55 15 Adobe and the other company.

03:28:59 16 A. Adobe and the other company?

03:29:01 17 Q. (Nonverbal response.)

03:29:02 18 A. Which other company?

03:29:03 19 Q. That's what I asked you and you didn't know.

03:29:07 20 A. No, I'm sorry. I'm confused and I want to make
03:29:10 21 sure I understand your question correctly. So could you
03:29:12 22 start over.

03:29:13 23 I'm not asking if you are talking -- I'm
03:29:16 24 wondering if you are talking about a defendant firm or
03:29:19 25 another firm that's not a defendant firm.

03:29:21 1 Q. I'm asking about the agreement that plaintiffs
03:29:24 2 are challenging in this case that Adobe had with another
03:29:28 3 company. Do you know who that company is?

03:29:32 4 MS. DERMODY: Object to form.

03:29:35 5 THE WITNESS: I said earlier I don't know
03:29:37 6 specifically what Adobe's agreement -- who Adobe had
03:29:40 7 agreements with.

03:29:42 8 MR. KIERNAN: Q. To move this along,
03:29:45 9 plaintiffs allege it was Apple. All right?

03:29:47 10 A. Okay.

03:29:47 11 Q. Would it matter to your opinion, the frequency
03:29:49 12 of the cold calls, between Adobe and Apple -- that would
03:29:55 13 have occurred in the but-for world between Adobe and
03:29:58 14 Apple?

03:30:00 15 A. I want to make sure I understand what would
03:30:02 16 have happened in the but-for world. Are you saying
03:30:05 17 would it matter to my opinion the difference between the
03:30:11 18 cold calls that happened during the agreements, which
03:30:13 19 let's assume is zero, and how many were happening in the
03:30:18 20 absence of the agreements, which is some number greater
03:30:21 21 than zero.

03:30:21 22 Q. Well, maybe.

03:30:32 23 A. That -- that frequency -- I mean, clearly, you
03:30:39 24 know, I'm operating under the assumption that the
03:30:43 25 agreements were in place to stop something, which was

03:30:46 1 the cold calling. And so stopping cold calling -- as I
03:30:51 2 said before, stopping cold calling -- the agreements
03:30:57 3 against cold calling, stopping cold calling, are
03:30:59 4 predicted to suppress the compensation. But remember
03:31:04 5 it's a prediction and not a measurement.

03:31:08 6 So that frequency, if it was X or 2X, I still
03:31:15 7 would make the same prediction if it were, say, X or 2X.
03:31:19 8 I think that's what you were asking. If it was a lot or
03:31:22 9 a super lot, X or 2X, I still have the same prediction.

03:31:28 10 Q. Okay. In a world in which the agreement wasn't
03:31:31 11 in place.

03:31:34 12 A. Okay.

03:31:34 13 Q. So there is no --

03:31:37 14 A. Agreements.

03:31:37 15 Q. -- agreement between Adobe and Apple.

03:31:41 16 A. Right.

03:31:41 17 Q. So an Adobe employee, in that but-for world,
03:31:43 18 gets a cold call from Apple --

03:31:50 19 A. Yes.

03:31:51 20 Q. -- negotiates higher pay --

03:31:52 21 A. With?

03:31:53 22 Q. -- with Adobe.

03:31:54 23 A. So Apple calls into Adobe, the Adobe employee
03:31:58 24 uses that information to negotiate a higher wage
03:32:02 25 internal to Adobe.

03:32:04 1 Q. (Nonverbal response.)

03:32:04 2 A. Okay.

03:32:05 3 Q. And you understand that's the but-for world
03:32:07 4 that plaintiffs are alleging?

03:32:13 5 MS. DERMODY: Object to form.

03:32:20 6 THE WITNESS: Again, I'm not sure what you mean
03:32:22 7 by the plaintiffs are alleging. I'm responding to these
03:32:26 8 questions, so I don't know about -- there is many
03:32:28 9 aspects of this case that I'm not party to.

03:32:31 10 MR. KIERNAN: Q. Okay.

03:32:32 11 A. So I don't want to comment on something that --

03:32:34 12 Q. Fair enough. So let's focus on the but-for
03:32:36 13 world as I just defined it. There is no agreement
03:32:40 14 between Adobe and Apple. Adobe employee gets a raise
03:32:43 15 after a cold call from Apple.

03:32:45 16 A. Okay. I thought you were talking about this.

03:32:48 17 Q. Follow me?

03:32:49 18 A. An Adobe employee gets a raise after a cold
03:32:52 19 call from Apple. Comes in, negotiates a higher wage.
03:32:55 20 Yes.

03:32:56 21 Q. Right. Would you predict that that raise would
03:33:03 22 then lead to a raise to all or nearly all technical
03:33:09 23 employees?

03:33:12 24 A. I wouldn't necessarily predict that that alone
03:33:16 25 would do that. That's why I said that that kind of

03:36:04 1 don't know these specific workers, what they're doing.
03:36:08 2 Imagine a worker, two people are working side by side --
03:36:11 3 five people are working side by side, they're all doing
03:36:14 4 roughly the same work, they're all paid roughly the same
03:36:17 5 way. One of them gets a cold call, that person's wage
03:36:23 6 increases. There is -- principles of internal equity
03:36:27 7 would suggest that there is upward pressure on the
03:36:30 8 others.

03:36:30 9 Q. I know. But you are talking about a
03:36:32 10 hypothetical. I'm talking about real life.

03:36:34 11 MS. DERMODY: Object to form.

03:36:36 12 MR. KIERNAN: Q. So let's focus on the
03:36:37 13 real life example. [REDACTED] he interviewed with
03:36:42 14 four firms, he's gone back to his manager with
03:36:44 15 information about his college buddies, and he's
03:36:48 16 negotiated a [REDACTED] increase in pay to his salary.

03:36:54 17 A. Right.

03:36:54 18 Q. How could that lead to an impact to even
03:36:59 19 people -- just the people in his own job title?

03:37:02 20 MS. DERMODY: Just one moment. So this is the
03:37:04 21 fifth time you've asked the same question, and we're
03:37:06 22 going to need to move on after this.

03:37:10 23 THE WITNESS: I think that, again, I don't know
03:37:12 24 those specific people.

03:37:14 25 MR. KIERNAN: Q. You would need to know

03:37:14 1 that?

03:37:17 2 A. No. I wouldn't have to know the people. But I
03:37:19 3 do --

03:37:20 4 Q. What would you need to know to make the
03:37:22 5 prediction that the other people within the same job
03:37:25 6 title --

03:37:26 7 A. An example.

03:37:26 8 Q. -- hang on -- would impact their compensation?
03:37:29 9 What are the things you would need to know to make that
03:37:31 10 prediction?

03:37:54 11 A. I would want to know what kind of work they're
03:37:56 12 doing. How they're doing, among other things. I
03:38:02 13 haven't thought about that. The reason you -- the
03:38:04 14 reason I'm reluctant to talk about a specific example is
03:38:07 15 I think that the fact that it's not -- this specific
03:38:12 16 example, I don't know that worker group, I don't know
03:38:14 17 that particular -- you know, I knew this is an example
03:38:19 18 of internal equity, that's why I talked about it.

03:38:21 19 But it's -- really what happens in that
03:38:24 20 particular work group is not -- what happens there -- my
03:38:33 21 results are not dependent on what happened in that work
03:38:37 22 group because there are other avenues for my predictions
03:38:43 23 or my -- my conclusions in my report.

03:38:48 24 Q. And what are those other conditions that would
03:38:52 25 lead you to the prediction about [REDACTED] impact on

03:38:55 1 anybody else?

03:38:58 2 A. I -- the report doesn't talk about that. What
03:39:00 3 the report talks about is there are suppressive -- that
03:39:07 4 the no-cold-calling agreements -- restrictions on
03:39:10 5 cold-calling agreements could be -- sorry. Wrong page.

03:39:15 6 That the restrictions against cold calling,
03:39:18 7 such as those at issue in the case, are predicted to
03:39:23 8 suppress compensation. And the reason I say that there
03:39:26 9 are multiple things here is that even independent of the
03:39:31 10 example, or an example like you talked about, there are
03:39:34 11 other reasons, including those I -- including some I've
03:39:39 12 mentioned earlier for that conclusion.

03:39:47 13 Q. Can you point to any examples of that happening
03:39:53 14 where an impact to compensation of all or nearly all of
03:39:57 15 the technical class members occurred because of changes
03:40:01 16 to some employees' compensation?

03:40:04 17 A. I didn't -- again, as you -- as you said this
03:40:09 18 morning, I didn't -- I don't have the decisions on the
03:40:12 19 individual managers or the data on what their
03:40:15 20 compensation -- individual compensation level was, so I
03:40:17 21 can't point to -- I'm talking about this idea based on
03:40:22 22 the knowledge of the compensation systems, not on the
03:40:25 23 outcome, not on estimating -- making an estimate of the
03:40:30 24 magnitude of the damages.

03:40:34 25 Q. Well, I'm not talking about the estimation of

03:40:36 1 damages. I'm talking about your prediction of impact.

03:40:44 2 MS. DERMODY: I'm sorry, is there a question
03:40:46 3 pending?

03:40:48 4 MR. KIERNAN: Q. Do you have an example of
03:40:49 5 where the compensation of all or nearly all
03:40:53 6 technical class members were impacted because of an
03:40:57 7 impact to the compensation of some employees?

03:41:02 8 MS. DERMODY: Object to form.

03:41:04 9 THE WITNESS: Do I have an example where that
03:41:05 10 happened?

03:41:07 11 MR. KIERNAN: Q. Correct.

03:41:09 12 A. I can't think of an example of what you are
03:41:12 13 describing. But again, that, I think, like this
03:41:16 14 example, is I understand what you are saying, that's
03:41:20 15 independent of the conclusions. This is really based on
03:41:23 16 my knowledge of the structure, my knowledge of
03:41:26 17 compensation systems, the research in practical world,
03:41:31 18 and the fact that these agreements are predicted to
03:41:35 19 suppress compensation.

03:41:42 20 Q. Okay. Do you have an opinion as to whether, as
03:41:48 21 suppression of compensation to some employees because of
03:41:51 22 the agreements, would have affected all or nearly all
03:41:54 23 class employees?

03:41:55 24 A. I'm sorry, could you say --

03:41:59 25 Q. Do you have an opinion --

03:42:00 1 A. I'm sorry.

03:42:00 2 Q. Do you have an opinion of whether a suppression
03:42:06 3 of compensation to some employees would have affected
03:42:12 4 all or nearly all technical class employees?

03:42:16 5 A. I'm trying to decide what you mean by would
03:42:19 6 have, whether that -- what you are trying to say is what
03:42:22 7 I'm saying. Is that given what I know about this, that
03:42:26 8 I'm predicting this outcome. I'm wondering by saying
03:42:28 9 "would have," if you are talking about something that
03:42:31 10 actually happened, which is the measurement of the data
03:42:32 11 again. So I'm just trying to understand the question.

03:42:35 12 I think what you are saying is what I'm saying,
03:42:36 13 which is that I believe the agreements are predicted to
03:42:42 14 suppress compensation. So I know I believe that, but I
03:42:45 15 just want to make sure, so --

03:42:47 16 Q. Let me ask it like this.

03:42:49 17 A. Okay.

03:42:50 18 Q. Have you formed an opinion that suppression of
03:42:53 19 compensation for some employees would necessarily lead
03:42:58 20 to the suppression of compensation of all or nearly all
03:43:01 21 technical class employees?

03:43:10 22 A. I don't think you could say that as universal
03:43:12 23 truth because there are some employees, I don't know,
03:43:15 24 CEO, for example, where if there is something happened
03:43:18 25 to -- you know, sounded like you were talking about a

03:43:21 1 very general statement.

03:43:24 2 Q. I was focusing on the technical class
03:43:25 3 employees.

03:43:26 4 A. Okay. Then could you say it again? Because
03:43:28 5 I -- I went off on a....

03:43:30 6 Q. I'm actually focusing on -- let's just go back
03:43:33 7 to 8.h.

03:43:35 8 A. 8.h. Okay. Page 4.

03:43:43 9 Q. Right. You state your opinion is, "I believe
03:43:45 10 that the agreements against cold calling, such as the
03:43:48 11 agreements at issue in this case, are predicted to
03:43:50 12 suppress the compensation of all or nearly all members
03:43:53 13 of plaintiffs' proposed technical class."

03:43:56 14 A. Right.

03:43:57 15 Q. Have you reached an opinion that the agreements
03:44:02 16 against cold calling would necessarily suppress the
03:44:04 17 compensation of all or nearly all members of plaintiffs'
03:44:07 18 proposed technical employee class?

03:44:10 19 A. Would necessarily suppress the compensation; is
03:44:12 20 that what you are asking?

03:44:13 21 Q. Correct.

03:44:14 22 A. I'm just a little bit unsure because those
03:44:17 23 aren't terms I would use. So I'm not -- or maybe I have
03:44:22 24 used terms -- what -- I mean, I use a lot of terms.
03:44:26 25 I've written a lot of words.

03:49:32 1 Q. I'd like to. You know why? Because here we
03:49:36 2 have people's salaries, and we have the performance
03:49:40 3 levels, we have the job codes, we have all the things
03:49:43 4 that you talk about that make a formalized pay system.
03:49:46 5 So I think -- I'd like you to take me through with this
03:49:49 6 specific example.

03:49:51 7 A. Again, I'm nervous about this specific example
03:49:54 8 because I don't know these folks. So I don't want to be
03:49:56 9 talking about a specific example, but I will do my best
03:49:58 10 to answer your question.

03:49:59 11 Q. Would that matter, though? Is that why you
03:50:01 12 keep clarifying that?

03:50:03 13 A. I was afraid what you were asking that I was --
03:50:06 14 I was being asked about a specific work group. So I
03:50:09 15 wanted to -- I didn't know if you had something in mind
03:50:12 16 with a specific group of workers. I just wanted to be
03:50:15 17 clear.

03:50:16 18 So let me talk about -- you asked about other
03:50:21 19 reasons why it might come to these conclusions. One is
03:50:24 20 the immediate, there -- if person X doesn't get the job
03:50:32 21 offer, there is less upward pressure on the wages of the
03:50:35 22 work crew, if they're doing similar work. Because
03:50:38 23 people -- there is this idea of internal equity. We
03:50:41 24 want to -- excuse me -- workers doing a similar work
03:50:47 25 similarly. Another is --

03:50:49 1 Q. So let's stop there and look at the example in
03:50:52 2 front of you.

03:50:53 3 A. Okay.

03:50:53 4 Q. So [REDACTED] --

03:50:55 5 MS. DERMODY: Just note you cut him off from
03:50:56 6 answering, so you might have a challenge getting the
03:50:59 7 whole answer out if you do that.

03:51:01 8 MR. KIERNAN: Okay.

03:51:02 9 Q. So [REDACTED] doesn't get the [REDACTED] bump. And
03:51:09 10 you're predicting -- you would predict that these other
03:51:12 11 employees here now wouldn't get some bump because
03:51:17 12 [REDACTED] didn't get the bump. Is that what you are
03:51:19 13 saying?

03:51:20 14 A. In example of internal equity concerns is
03:51:23 15 that -- related to internal equity concerns is the idea
03:51:27 16 that people doing similar work would be paid similarly.

03:51:31 17 Q. So let's look here.

03:51:32 18 A. Well, again, I don't know if they're doing
03:51:34 19 similar work, but let's assume that they are. So that
03:51:37 20 if one didn't get a raise, there would be less upward
03:51:40 21 pressure on others in the work group than if the person
03:51:43 22 did get a raise. I think that's what you've been asking
03:51:46 23 me.

03:51:47 24 I think you were making that as a general
03:51:50 25 argument that that alone led to paragraph h. And I'm

03:51:52 1 saying there are other reasons -- I really thought that
03:51:56 2 that's what you were driving toward. That a cold call
03:51:59 3 into a particular person would necessarily lead to the
03:52:02 4 conclusion. And that's not the only reason that would
03:52:05 5 lead to the conclusion, and that was why I said there
03:52:08 6 are these other features that I wanted to talk about.

03:52:10 7 Q. Right. And that's what I want you to talk
03:52:12 8 about.

03:52:12 9 A. Okay.

03:52:13 10 Q. Okay.

03:52:13 11 A. But then I thought you stopped me to go here
03:52:16 12 again. So let me give you one other example.

03:52:19 13 One would be imagine the salary surveys which
03:52:29 14 we didn't really talk about. There are two types of
03:52:31 15 data you could get from the external market. One is
03:52:33 16 salary survey data. So what are you paying workers in
03:52:37 17 the market. I go through a more complicated example in
03:52:40 18 figures 2, 3, 4, 5 and 6. It's a little bit more of
03:52:45 19 the -- but, you know, it doesn't have to be that way
03:52:48 20 necessarily as an example where external market data are
03:52:52 21 brought into the internal market.

03:52:54 22 And if there is suppression of wages in the
03:52:58 23 external market, or anywhere, then those wages that a
03:53:05 24 company looks at to see what competitors are paying are
03:53:13 25 necessarily lower. So there is another avenue.

03:53:17 1 (Reporter clarification.)

03:53:19 2 THE WITNESS: Are necessarily lower. I'm
03:53:19 3 sorry.

03:53:19 4 Another avenue has to do with salary
03:53:23 5 increase -- or budget increases, which is the example I
03:53:27 6 talked about earlier. And I don't know if we ever found
03:53:32 7 it. I think it was 160-something, someone said that we
03:53:38 8 looked at. Maybe you directed me to it. And this is
03:53:41 9 the second one. No, that's not it. I don't know where
03:53:44 10 it is.

03:53:45 11 Where if it were the case that there is a
03:53:48 12 massive -- doesn't have to be massive. Any -- if it's
03:53:52 13 the case that because there is less competition for
03:53:59 14 wages, that the raises the people are expecting next
03:54:02 15 year are lower than the raises if -- to the extent that
03:54:06 16 firms are using external market data on what raises will
03:54:10 17 be, if raises are lower because there is less
03:54:13 18 competition in the market, then that's another
03:54:18 19 propagating effect.

03:54:20 20 So there are multiple reasons that we've talked
03:54:22 21 about. Including those related to internal equity,
03:54:25 22 including multiple uses of external market data.

03:54:29 23 So again, based on that knowledge of this,
03:54:32 24 using external market data, all defendants use external
03:54:35 25 market data, I come to the conclusion that we talked

03:54:39 1 about. The agreements against cold calling are
03:54:41 2 predicted to suppress compensation.

03:54:57 3 MS. DERMODY: If you're at a convenient break
03:54:59 4 point, David, we've been going over an hour.

03:55:02 5 MR. KIERNAN: This is fine. This is fine.

03:55:09 6 THE VIDEOGRAPHER: We're going off the record
03:55:11 7 at 3:55 p.m.

03:55:13 8 (Recess taken.)

04:17:47 9 THE VIDEOGRAPHER: We're back on the record at
04:17:50 10 4:17 p.m.

04:18:12 11 MR. KIERNAN: Q. Okay. Can you turn to
04:18:14 12 paragraph 194 of your report. That's on page 58.
04:18:33 13 Okay.

04:18:34 14 You state here, "In the instance of this case,
04:18:36 15 the defendant firms limited the market for the employees
04:18:39 16 by restricting cold calling. This clearly led to what
04:18:43 17 would otherwise be higher levels of compensation for
04:18:45 18 some of those in the firms, except that the restrictions
04:18:49 19 were in place."

04:18:52 20 Do you see that?

04:18:55 21 A. I do. On page 58, yeah.

04:18:58 22 Q. What's the basis for your statement that the
04:19:02 23 agreements being challenged by the plaintiffs clearly
04:19:06 24 led to what otherwise would be higher levels of
04:19:10 25 compensation for some of those in the firms except that

04:19:13 1 the restrictions were in place?

04:19:19 2 A. That -- well, it's related to what we were
04:19:22 3 talking about before. One example would be that -- two
04:19:27 4 things that occur to me right away, and we can talk
04:19:29 5 about others. One is that restricting cold calling, in
04:19:34 6 the example I can't remember the name that we talked
04:19:35 7 about before the break, you've talked about the example
04:19:40 8 where in the absence of the -- the cold calling
04:19:45 9 restrictions, the person's wage would not have been
04:19:47 10 raised by \$20,000, so that's an example.

04:19:50 11 I think we're talking into the area we were
04:19:53 12 talking about earlier, though, whether it happened or is
04:19:56 13 a prediction to happen. But I also was thinking about
04:19:59 14 what comes right before that. The statement from the
04:20:04 15 court, I think that's -- yeah. The question presented
04:20:07 16 in this case is not whether defendants'
04:20:09 17 anti-solicitation agreements had any impact on
04:20:12 18 employees, defendants concede that some employees may
04:20:14 19 have been impacted.

04:20:16 20 And then goes on to say and admit -- and I
04:20:19 21 admit at the start we are not saying that nobody was
04:20:22 22 impacted. So, you know, a combination of those things,
04:20:26 23 it's just sort of related to the same ideas.

04:20:30 24 Q. And what I'm trying to understand is are you
04:20:32 25 saying here that you are predicting that because of the

04:20:37 1 agreement, some people would have been impacted, are you
04:20:40 2 saying that they were, in fact, impacted?

04:20:49 3 A. In this -- I think really what I'm intending
04:20:54 4 here is that this is -- this is a little bit narrower
04:21:00 5 than the things we were talking about before.

04:21:03 6 Q. Correct.

04:21:04 7 A. This is, you know, in reference to the quote
04:21:06 8 above where the court said it's not that they -- it's
04:21:09 9 not whether the anti-solicitation agreements or what
04:21:12 10 we've been calling no-cold-call agreements had any
04:21:16 11 impact, that the defendants concede. So I was sort of
04:21:19 12 saying, well, there is concession. This is consistent
04:21:22 13 whether there is concession that some people --

04:21:26 14 Q. It says the concession is may have been
04:21:28 15 impacted, not that they were impacted. You see that?

04:21:31 16 A. I see that part. And then the part beyond it
04:21:33 17 says and I admit at the start we are not saying that
04:21:36 18 nobody was impacted.

04:21:37 19 Q. Right.

04:21:37 20 A. So I wasn't necessarily referring to that part,
04:21:39 21 but that paragraph 193.

04:21:41 22 Q. Independent of relying on those statements that
04:21:45 23 you just pointed out in 193, have you independently
04:21:50 24 determined whether any employee at any of the seven
04:21:54 25 companies was impacted by the agreements?

04:30:37 1 support specialist would lead to suppression of
04:30:50 2 compensation of all or nearly all the technical class
04:30:53 3 members across job titles within the technical class.

04:30:58 4 A. It doesn't have to. So that's what we talked
04:31:00 5 about before. That there could be -- there are various
04:31:04 6 avenues by which -- by which the anti no-cold-call --
04:31:11 7 the anti -- I don't want to use a double negative.
04:31:15 8 There are various avenues by which the no-cold-call
04:31:18 9 agreements can lead to -- or the agreements against cold
04:31:23 10 calling can lead to suppression of compensation, and
04:31:28 11 they don't have to.

04:31:30 12 And this really is, I think, what we were
04:31:32 13 talking about right before the break. They don't -- it
04:31:35 14 doesn't have to be by that avenue.

04:31:37 15 Q. By which avenue?

04:31:38 16 A. By the avenue of the absence of a cold call to
04:31:42 17 a particular member of that job title and that company.

04:31:51 18 Q. Okay. But it has to start with someone not
04:31:54 19 getting a cold call, right?

04:31:56 20 A. Absolutely.

04:31:56 21 Q. Okay.

04:31:57 22 A. But you were asking how it would happen in that
04:31:59 23 case, and I don't know whether or not someone in that
04:32:02 24 case was being cold called. But I'll talk about, again,
04:32:07 25 I think what you are asking is that there are a variety

04:32:10 1 of reasons you were asking me, prior to the break,
04:32:15 2 reasons for how it is that cold call agreements --
04:32:30 3 restrictions on cold calling would predict the
04:32:32 4 compensation, and we talked about those varieties. And
04:32:35 5 one of those was the issue of internal equity in the
04:32:39 6 simple job group, which would be you could use the
04:32:42 7 analogy in this group, although I haven't studied this
04:32:45 8 group in particular, I don't have the data as we've
04:32:49 9 talked about.

04:32:50 10 And others could be these issues that have to
04:32:51 11 do with how the structure is set up and the market
04:32:55 12 survey data. And the market survey data, with the
04:32:57 13 variety of the uses of the market data, are -- include
04:33:02 14 suppressed wages that can lead to suppression elsewhere.
04:33:08 15 That's what we talked about right before we broke.

04:33:11 16 Q. Did you examine whether the market data that
04:33:16 17 you're referring to included suppressed wages?

04:33:24 18 A. Again, I don't have wages of individual
04:33:26 19 workers. I'm talking about a prediction based on what I
04:33:28 20 know about the structures and the systems.

04:33:30 21 Q. If you could just answer my question. The
04:33:32 22 question was, did you examine the market data to
04:33:35 23 determine if it included suppressed wages?

04:33:39 24 MS. DERMODY: Object to form.

04:33:43 25 THE WITNESS: I saw some market data, but I

04:33:45 1 didn't examine. And again, it's impossible to -- I
04:33:48 2 think what you are asking is did I see cases where there
04:33:52 3 was suppressed wages because a cold call didn't happen.
04:33:54 4 But I don't know if a cold call would have happened in
04:33:56 5 that place, so I don't --

04:34:01 6 MR. KIERNAN: Q. That's not what I asked
04:34:02 7 at all. I'm asking you did you determine or did you
04:34:05 8 examine whether the market data, to use your words,
04:34:09 9 included suppressed wages?

04:34:12 10 MS. DERMODY: Object to form.

04:34:13 11 THE WITNESS: I think -- I'm sorry, because I
04:34:16 12 think that's what I was answering. And I --

04:34:20 13 MR. KIERNAN: Q. Well, it's yes or no.

04:34:22 14 A. Oh, okay.

04:34:23 15 Q. You either examined it or you didn't.

04:34:25 16 A. I'm sorry. Did I examine market data that
04:34:27 17 included suppressed wages. I didn't have -- I had some
04:34:30 18 market data, but I don't know if the market data, you
04:34:35 19 know, had suppressed wages or not in those instances --

04:34:41 20 Q. Do you know --

04:34:41 21 A. -- because we're talking about this but-for
04:34:43 22 world.

04:34:44 23 Q. Right. Now, you mentioned -- and I'm still
04:34:49 24 confused because you are talking about these various
04:34:52 25 avenues.

04:36:01 1 Q. Okay.

04:36:01 2 A. So we'll assume we have suppressed wages for
04:36:04 3 some employees.

04:36:04 4 Q. Okay. And taking the next step --

04:36:07 5 A. Okay.

04:36:07 6 Q. -- of how other employees within the same job
04:36:11 7 title are impacted.

04:36:13 8 A. Okay. So I'll use an example of -- let me just
04:36:18 9 use a completely hypothetical example of exactly this.

04:36:21 10 Let's say that we have people who are probably not
04:36:28 11 carpenters. Let's use an occupation of carpenters.

04:36:33 12 Q. Let's use -- can we use this case that you
04:36:35 13 actually studied?

04:36:36 14 A. Sure, let's use engineer IIs, which is an
04:36:39 15 example I actually write down in my example.

04:36:41 16 Q. Well, that's from your book, right?

04:36:44 17 A. Sure.

04:36:44 18 Q. No. I want to use someone from Intel.

04:36:46 19 A. Okay. Let's use an example of an engineer of a
04:36:49 20 particular type. I don't know what the particular types
04:36:51 21 are, but let's use an engineer.

04:36:53 22 Q. Why don't we use the IT support specialist.

04:36:57 23 A. Okay. Let's use -- again, I don't want to use
04:37:03 24 a specific example of a particular -- well, it doesn't
04:37:06 25 matter. Let's use any occupation.

04:37:09 1 If they're -- if it is the case that an
04:37:13 2 employer -- employers use external data. Here is an
04:37:18 3 avenue. We've talked about multiple avenues.

04:37:22 4 Q. So that we're not here all day I want you to
04:37:24 5 focus on Intel.

04:37:25 6 A. We'll use Intel.

04:37:26 7 Q. Please. Intel IT support specialist. That
04:37:32 8 employee, or some group of employees, wages are
04:37:34 9 suppressed because of the agreements.

04:37:36 10 MS. DERMODY: Object to form.

04:37:37 11 MR. KIERNAN: Q. Walk me through how that
04:37:40 12 impact -- that suppression spreads through all
04:37:45 13 35,000 employees in the technical class at Intel.

04:37:48 14 MS. DERMODY: Object to form.

04:37:49 15 THE WITNESS: Again, that's not what I'm
04:37:50 16 saying. I'm saying that there are a variety of ways
04:37:53 17 that the -- there are multiple avenues. We've talked
04:37:57 18 about three. I'll talk about them again. One of the
04:38:01 19 avenues is if -- if I am an employer and I use market
04:38:07 20 data, even on a particular occupation -- it could be on
04:38:09 21 a structure, but on a particular occupation -- and those
04:38:12 22 data are suppressed, and I use those data to think about
04:38:17 23 how to compensate people within my organization, then
04:38:23 24 there can be transmission of that suppression. That's a
04:38:25 25 particular example.

04:38:27 1 MR. KIERNAN: Q. That's a theoretical,
04:38:28 2 hypothetical example. Now, focusing on --

04:38:31 3 MS. DERMODY: Object to form.

04:38:34 4 MR. KIERNAN: Q. -- Intel and Intel's
04:38:37 5 formalized pay systems that you write about, and
04:38:38 6 that you say because of the formalized pay systems
04:38:42 7 you can predict that impact -- that suppression of
04:38:49 8 some employees within the technical class will lead
04:38:51 9 to suppression of all 35,000 technical employees. I
04:38:54 10 want to know how that works.

04:38:58 11 A. I think the things that I'm saying are
04:39:02 12 consistent. And you keep moving back to a particular
04:39:05 13 example, and I don't think it really matters. In that
04:39:08 14 example, the wages that I'm -- the data that I'm using
04:39:12 15 to think about what I'm doing internally are suppressed,
04:39:16 16 and therefore, any wage that I link with that is
04:39:20 17 suppressed. That's one.

04:39:21 18 Let me tell you the other one, which might be
04:39:23 19 more -- any wage that I'm relying on for those data.
04:39:27 20 Another one is the increase survey which I said.
04:39:31 21 Imagine again, let's say it's the case in a particular
04:39:36 22 employee, particular company, that we have a set of
04:39:41 23 compensation, and the market raise next year would be 6
04:39:47 24 percent if there were no agreements.

04:39:51 25 If there are agreements, it's going to be

04:39:52 1 less -- it would be less than 6 percent. That's a
04:39:55 2 logical conclusion. There is less pressure on wages.
04:39:58 3 The external market has -- instead of 6 percent it's a
04:40:02 4 number less than 6 percent. And let's say, then, that
04:40:05 5 you propagate that, take a number, not six but a smaller
04:40:09 6 number, and propagate that, raise everyone -- everyone's
04:40:13 7 wage will be increased by less.

04:40:15 8 That one -- that -- so that's the third example
04:40:20 9 of how I think that this -- I believe that the
04:40:24 10 agreements are predicted to suppress compensation.

04:40:29 11 Q. And can you give a specific example for any
04:40:32 12 defendant? You are struggling with Intel.

04:40:37 13 MS. DERMODY: Objection.

04:40:37 14 MR. KIERNAN: Q. Can you choose another
04:40:38 15 defendant where you can walk me through their
04:40:41 16 specific formalized pay system --

04:40:43 17 A. I don't think I'm struggling with any
04:40:44 18 defendant. I think what I said applies to all
04:40:47 19 defendants. I said the agreements against cold calling,
04:40:49 20 such as the agreements at issue in this case, are
04:40:54 21 predicted to suppress the compensation. And it -- it's
04:41:00 22 the same thing. I mean, I -- that's true of all -- of
04:41:04 23 all defendants.

04:41:07 24 I was just worried because you were talking
04:41:09 25 about specific examples or specific people or something,

04:41:11 1 and it doesn't have to be. Particularly in that last
04:41:15 2 case.

04:41:17 3 Q. Well, the defendants, as you said before, do
04:41:20 4 not have identical pay structures or pay systems.

04:41:24 5 A. That's right.

04:41:25 6 Q. And they may use market data differently.

04:41:29 7 MS. DERMODY: Object to form.

04:41:35 8 THE WITNESS: I don't know that I said they'd
04:41:38 9 use market data differently, but there are only so many
04:41:41 10 ways to use market data. And since all employers -- all
04:41:46 11 seven defendant employers use market data, there are
04:41:51 12 only so many ways you can use market data. And either
04:41:54 13 way, ways one would use market data are certainly
04:41:58 14 consistent with this idea.

04:41:59 15 So I think the fact that they don't have
04:42:01 16 identical systems isn't -- doesn't impact my conclusion.

04:42:16 17 MR. KIERNAN: Q. So assuming there are
04:42:18 18 suppressed wages for some IT support specialists at
04:42:21 19 Intel.

04:42:22 20 A. Okay.

04:42:22 21 Q. Follow me?

04:42:24 22 A. So there's --

04:42:25 23 Q. What avenues --

04:42:27 24 A. I'm sorry. So you are saying they're
04:42:28 25 suppressed because of the cold calling agreements?

04:42:34 1 Q. Yes.

04:42:34 2 A. Okay.

04:42:35 3 Q. Would that make a difference to your analysis?

04:42:36 4 A. No, I just want to make sure I'm answering the

04:42:39 5 question carefully.

04:42:40 6 Q. So assuming suppressed wages for some IT

04:42:43 7 support specialists at Intel --

04:42:45 8 A. I shouldn't say that, what I said. Because I

04:42:49 9 asked the question about something you were about to ask

04:42:53 10 a question about. So it might have an impact, but I

04:42:55 11 don't think it will. You were just saying the wages

04:42:57 12 were suppressed.

04:43:00 13 Q. Assuming suppressed wages for some IT support

04:43:02 14 specialist at Intel.

04:43:03 15 A. Right.

04:43:05 16 Q. Which avenues that you've identified would lead

04:43:11 17 to or could be predicted to suppress the wages of the

04:43:15 18 other IT support specialists?

04:43:18 19 MS. DERMODY: Object to form.

04:43:29 20 THE WITNESS: Well, one of them is the one that

04:43:31 21 we talked about earlier. Immediately I think that the

04:43:34 22 internal equity within the group. And what I'm -- so

04:43:40 23 there is one example.

04:43:43 24 MR. KIERNAN: Q. Right. And would the

04:43:45 25 internal equity -- okay.

04:45:16 1 I think that what the struggle here is you are asking
04:45:19 2 about a narrow slice. I think what you are trying to do
04:45:24 3 is ask me about, you know, given this specific thing
04:45:29 4 happened, how could you lead to these other things.

04:45:31 5 And you are talking about a hypothetical
04:45:34 6 example. I'm talking about given what I know about
04:45:36 7 these structures, there are a variety of avenues. So
04:45:39 8 it's not just because A happened that B had to happen,
04:45:43 9 because it could have been other things that led to B.
04:45:48 10 So it might not have been an impact on those workers, it
04:45:53 11 might have been some impact somewhere else. And that's
04:45:55 12 why there are these multiple -- that's why I keep coming
04:45:58 13 back to the multiple avenues and why I'm struggling with
04:46:01 14 this specific case versus the general case.

04:46:02 15 I'm not trying to be -- sort of evade that,
04:46:05 16 it's just that you are trying to translate a specific
04:46:10 17 question -- you are saying, jeez, given this specific
04:46:14 18 question, there is this general conclusion, and I'm
04:46:16 19 saying I'm not. My conclusions come from something more
04:46:19 20 than a specific example.

04:46:35 21 Q. If -- did Intel have separate salary ranges for
04:46:41 22 each of its job titles?

04:46:50 23 A. I wonder if I can speak to that directly.

04:46:54 24 Q. Let's do it this way.

04:46:55 25 A. Okay.

04:46:56 1 Q. I'll just do it in a hypothetical.

04:46:57 2 A. That would be easier.

04:46:59 3 Q. Much easier.

04:47:00 4 So assume that for each job title at Intel
04:47:03 5 there is a separate salary range.

04:47:06 6 A. Okay.

04:47:07 7 Q. And salary range, what I mean is what we talked
04:47:10 8 about this morning, min, mid, max.

04:47:14 9 A. Okay. So for each job title at Intel where --
04:47:18 10 you are making the assumption that for each job title at
04:47:21 11 Intel you have a min, mid, max.

04:47:26 12 Q. And the midpoint of each job title -- or the
04:47:28 13 midpoint of each salary range of each job title is based
04:47:33 14 on market data for that specific job title. That's part
04:47:39 15 of the hypothetical. Are you following me so far?

04:47:42 16 A. I think, let me -- I just want to make sure I'm
04:47:44 17 following you. Intel, a salary range, min, mid, max for
04:47:53 18 every job title, and that the mid is based on market
04:47:55 19 data of some type.

04:48:00 20 Q. Right.

04:48:00 21 A. Okay.

04:48:00 22 Q. Market data that is pegged to that specific job
04:48:03 23 title.

04:48:03 24 A. Okay.

04:48:06 25 Q. If the suppressed wages are in the market data

04:48:09 1 for the IT specialist, how would that affect the
04:48:16 2 compensation of another job title in the technical
04:48:20 3 class, like the yield engineers?

04:48:23 4 A. Right. It doesn't -- again, this is an
04:48:26 5 example -- sorry to say, but it's an example just like
04:48:29 6 we went through before the break, and the previous bit
04:48:34 7 of time here. That doesn't have to be the propagation
04:48:40 8 mechanism. That's -- you are narrowing the idea into
04:48:43 9 one of the multiple ways this can happen. One way you
04:48:48 10 would use data. But there are other ways you would use
04:48:51 11 market data that would lead to the conclusion that
04:48:57 12 agreements against cold calling are predicted to
04:49:02 13 suppress compensation.

04:49:03 14 So it doesn't necessarily have to be that
04:49:05 15 particular avenue. I realize it's a hypothetical, but
04:49:09 16 there are multiple avenues and there could be another.

04:49:12 17 Q. Okay. Given the assumptions of the
04:49:14 18 hypothetical I gave you --

04:49:18 19 A. Yes.

04:49:20 20 Q. -- would the use of the market data in that way
04:49:24 21 necessarily lead to -- where the suppression of wages
04:49:28 22 and market data for IT specialists lead to an impact on
04:49:34 23 the compensation for an entirely different job title?

04:49:43 24 A. In that question I think you are referring to
04:49:45 25 something we talked about before. So could you say it

04:49:47 1 again? Because I only heard --

04:49:49 2 Q. I'm referring to the same hypothetical where
04:49:51 3 the salary range -- there is a separate salary range for
04:49:55 4 each job title at Intel.

04:49:57 5 A. Okay.

04:49:58 6 Q. And they get different market data for each of
04:50:02 7 those salary ranges, right?

04:50:04 8 A. Okay. So separate midpoint for each job title.

04:50:09 9 Q. Correct.

04:50:09 10 A. Yes.

04:50:11 11 Q. If there's suppression of wages in the market
04:50:15 12 data for the IT specialist --

04:50:20 13 A. Which is one occupation.

04:50:21 14 Q. One occupation.

04:50:23 15 -- would the -- I guess what avenues, then,
04:50:26 16 would cause an impact in the effect of the other job
04:50:30 17 titles?

04:50:32 18 A. Again, I think that your example is specific to
04:50:35 19 talking about -- I'm sorry, I had my hands over -- that
04:50:42 20 there are other ways where you could -- as I described
04:50:47 21 earlier in the example -- where even if you had what you
04:50:51 22 are describing, which is market data by occupation, and
04:50:57 23 you're talking about suppression in occupation A and you
04:51:01 24 are asking how did that lead to suppression in
04:51:04 25 occupation B.

04:51:04 1 Q. Correct.

04:51:05 2 A. So I can't remember the name. Call them A and
04:51:07 3 B.

04:51:07 4 Q. No, no, you're --

04:51:09 5 A. It doesn't have to transmit that way. There
04:51:11 6 are other ways. There are three avenues that we've
04:51:15 7 talked about, at least, so far today that we could --
04:51:19 8 what could happen. You are talking about suppression in
04:51:22 9 one occupation into another, but it could be -- there
04:51:25 10 could be other avenues that that could do.

04:51:27 11 Q. List those for me.

04:51:29 12 A. Yes.

04:51:29 13 Q. Going title to title.

04:51:30 14 A. Here's the example. It's the example we just
04:51:33 15 talked about where we have workers, we have them in
04:51:38 16 their jobs, they all have a salary, let's just say we're
04:51:43 17 talking about salary, and we're thinking about what the
04:51:45 18 raise is going to be next year. And if raises next year
04:51:49 19 are smaller because of suppression, can we use market
04:51:55 20 data to help determ- -- think about raises, then the
04:52:00 21 suppression that leads to a smaller raise in the market
04:52:03 22 can lead back to suppression. That's another example.

04:52:06 23 I think that's -- the problem is that you are
04:52:08 24 trying to talk about specific cases, and there are
04:52:13 25 multiple mechanisms that lead me to the conclusion that

04:52:16 1 if you restrict cold calling, there is the prediction of
04:52:29 2 a suppression of compensation. Yeah.

04:52:34 3 Q. You just talked about the overall budget being
04:52:37 4 suppressed; is that following your avenue?

04:52:42 5 A. I didn't say the overall budget. I was talking
04:52:45 6 about a number you might get from the market based on
04:52:47 7 what salary predictions or expectations might be. But
04:52:51 8 not -- I didn't say the word budget.

04:53:05 9 Q. Okay. Did Intel use the market data in the way
04:53:07 10 that you just described?

04:53:13 11 A. Intel used market data. I can't remember, but
04:53:16 12 I'll look here to see. There are seven defendants, lots
04:53:21 13 of documents. I'll try to look to see -- there are two
04:53:24 14 places I could look quickly -- well, there are probably
04:53:27 15 more than two. But right off the top of my head, I'm
04:53:30 16 not sure exactly how they use market data.

04:53:32 17 I do know that Intel used market data because
04:53:36 18 all defendants used data of some sort from the market.
04:53:39 19 But I can look if you -- I'm happy to look.

04:53:42 20 Q. If they didn't use it in the way that you just
04:53:45 21 described, how would suppression of compensation in one
04:53:51 22 job title transmit to suppression of compensation in
04:53:56 23 another job title?

04:53:57 24 A. You know, there are other avenues, like we
04:53:59 25 talked about before, where internal equity concerns

04:54:01 1 where one job title -- again, there -- again, we've
04:54:04 2 talked about at least three. I'm counting.

04:54:07 3 One other avenue would be issues of internal
04:54:10 4 equity. Where even people who are doing different kinds
04:54:15 5 of jobs could be in related levels and so on. So
04:54:23 6 suppression in one, because of equity concerns, could be
04:54:25 7 suppression of others. I'm thinking of an example might
04:54:28 8 be a head of one group or a head of another group, where
04:54:32 9 if you want all heads to be the same because of some
04:54:34 10 culture or something in the organization, that that
04:54:36 11 could propagate that way as well.

04:54:40 12 So it's back to the internal equity concern
04:54:42 13 that we talked about before the break in what you called
04:54:45 14 Exhibit 2. It might not be exactly people in that
04:54:49 15 occupation -- occupation wasn't the word you used -- job
04:54:51 16 title -- could be in related job titles where internal
04:54:55 17 equity concerns could matter as well.

04:54:57 18 Q. And is that how we can use Intel -- is that how
04:55:02 19 Intel applied internal equity if it applied across job
04:55:05 20 titles as you just described?

04:55:07 21 A. I don't know in particular. I do know that
04:55:10 22 Intel followed principles of internal equity, but I'm
04:55:12 23 not sure if they did in precisely the way I just
04:55:16 24 mentioned. I'd have to look. I can look at my
04:55:20 25 internal -- see if I have sort of evidence of that if

04:55:22 1 you want me to try to find it in here. So I don't know
04:55:27 2 in particular if they did that in that specific way.

04:55:30 3 Q. But isn't it necessary for your prediction that
04:55:35 4 suppression of wages in one job title would spread to
04:55:37 5 all other job titles?

04:55:40 6 MS. DERMODY: Object to form.

04:55:43 7 THE WITNESS: My prediction about -- I don't
04:55:45 8 make a prediction about that prediction.

04:55:47 9 MR. KIERNAN: Q. Which prediction?

04:55:49 10 A. I don't make a -- I don't make that specific
04:55:51 11 prediction that you did, although it's consistent with
04:55:53 12 my big -- my overall prediction. But I don't -- again,
04:55:58 13 it's not necessary to have any one of these particular
04:56:03 14 avenues. There are multiple avenues that lead to the
04:56:06 15 prediction. And they're all fundamentally based on
04:56:11 16 multiple issues here, one of which is formalized
04:56:16 17 structures and pay systems.

04:56:18 18 And another is principles of internal equity,
04:56:21 19 uses of market data, and others that we've been talking
04:56:25 20 about today.

04:56:31 21 Q. Okay. Focusing on Apple for a minute.

04:56:45 22 A. Apple?

04:56:45 23 Q. Yes.

04:56:47 24 A. Okay.

04:56:48 25 Q. Which features of the -- their compensation

04:56:54 1 system leads you to the prediction that suppression of
04:57:02 2 compensation of an employee with one job title would
04:57:06 3 necessarily result in an impact to other employees in
04:57:10 4 entirely different job titles?

04:57:11 5 A. Was the first word you said bear -- or not the
04:57:14 6 first word, but an early word? I just didn't --

04:57:17 7 Q. I said focusing on Apple, which features of its
04:57:22 8 compensation system leads you to the prediction that
04:57:25 9 suppression of compensation of an employee with one job
04:57:29 10 title would lead to an impact to other employees in
04:57:34 11 entirely different job titles?

04:57:39 12 A. I think it seems to me that that's the same
04:57:41 13 question that you just asked about the previous company.
04:57:44 14 And I'm not sure that I say that.

04:57:47 15 I don't say that one in one job title leads to
04:57:50 16 another in another job title because there are multiple
04:57:52 17 avenues. So again, I think what you are saying is you
04:57:55 18 are giving a hypothetical example of a particular thing
04:57:58 19 that happened and how does that lead to the general
04:58:00 20 conclusion. And that's not -- that's not what I did.
04:58:05 21 And it's not necessary that that happened for there to
04:58:08 22 be -- to lead me to the conclusion that the
04:58:12 23 suppression -- or sorry, that the existence of
04:58:18 24 no-cold-calling agreements led to suppression of wages.
04:58:23 25 My prediction. I meant to say prediction.

05:01:43 1 the same; is that right? It didn't require that
05:01:47 2 everyone be paid exactly the same that were doing the
05:01:50 3 same job?

05:01:51 4 A. No.

05:01:54 5 Q. And it didn't mean that people would move in
05:01:56 6 lock step?

05:01:59 7 A. No. Internal equity. No.

05:02:03 8 Q. And consistent with internal equity, if someone
05:02:06 9 were more valuable, a manager may decide to pay them
05:02:10 10 more based upon their performance.

05:02:17 11 A. I think if someone is more valuable and one is
05:02:20 12 paid more is sort of the issue of the relationship of
05:02:23 13 performance and pay. And I think you said something
05:02:26 14 about that that's consistent with internal equity. The
05:02:29 15 issue of equity requires more than one person, and so I
05:02:34 16 wouldn't put those two together because you were talking
05:02:36 17 about one person. And that equity, I think by
05:02:41 18 definition, requires more than one.

05:02:44 19 Q. Under what conditions would internal equity
05:02:49 20 require a manager at any of the companies to raise the
05:02:56 21 pay of other employees?

05:03:04 22 A. Wondering about the word "require." And --

05:03:09 23 Q. Well, let me ask you -- that's a good point --

05:03:11 24 A. Okay.

05:03:12 25 Q. -- so strike the question.

05:03:16 1 A. Okay.

05:03:16 2 Q. Do you have an opinion that because of
05:03:18 3 principles of internal equity, managers were required to
05:03:22 4 increase the pay of some employees because they increase
05:03:27 5 the pay of other employees?

05:03:29 6 MS. DERMODY: Object to form.

05:03:33 7 THE WITNESS: Do you mean at that time? So
05:03:34 8 when one person gets an increase, then we're immediately
05:03:38 9 going to give everyone the increase?

05:03:40 10 MR. KIERNAN: Q. Or at any time.

05:03:42 11 A. Well, I think these issues of equity don't --
05:03:45 12 aren't immediately resolved. They might work over time,
05:03:47 13 as we talking about in I think figure -- figures 12, 13,
05:03:55 14 14, 15 and 16. I should check that. I shouldn't just
05:04:01 15 say that, but I'm pretty sure. Yeah.

05:04:03 16 Q. The salary matrices?

05:04:05 17 A. Yeah. One is -- no, those aren't salary
05:04:07 18 matrices, those are the -- where one -- where one axis
05:04:11 19 was performance and another was position and range. The
05:04:17 20 salary matrices were a separate issue. So I was meaning
05:04:22 21 12 through 16. Those are sort of consistent with equity
05:04:30 22 as an example.

05:04:31 23 Q. Okay. And how long does it take for the issues
05:04:36 24 of internal equity to be solved, as you put it?

05:04:42 25 MS. DERMODY: Object to form.

05:04:43 1 THE WITNESS: You know, I think that it could
05:04:46 2 depend. I think that sometimes very rapidly, and
05:04:50 3 sometimes, as is the suggestion in these examples, that
05:04:55 4 companies are cognizant. And every defendant, they're
05:04:58 5 following principles of internal equity. Figures 12,
05:05:03 6 13, 14, 15 and 16 I think there are consistent with that
05:05:08 7 in an explicit way.

05:05:09 8 There are lots of other examples in here. But
05:05:11 9 those are examples where organizations are concerned
05:05:15 10 with that where it's not immediately resolved. And it
05:05:19 11 could take some time.

05:05:23 12 MR. KIERNAN: Q. Using Adobe, since we had
05:05:35 13 an example of someone getting a raise. If someone
05:05:40 14 gets a raise because of a cold call at Adobe --

05:05:45 15 A. Is this the example of the [REDACTED] that we've
05:05:47 16 been talking about?

05:05:48 17 Q. Let's just use -- I'm not going to use names.

05:05:51 18 A. Okay.

05:05:52 19 Q. Employee A gets a raise because of a cold call.

05:05:54 20 A. Okay.

05:05:59 21 Q. Due to issues of internal equity at Adobe being
05:06:05 22 considered by individual managers, how long would it
05:06:08 23 take for someone else's compensation to be impacted?

05:06:14 24 MS. DERMODY: Object to form.

05:06:18 25 THE WITNESS: I don't -- that's a specific -- I

05:06:20 1 think it would depend.

05:06:22 2 MR. KIERNAN: Q. Would it impact anyone
05:06:24 3 else's compensation?

05:06:25 4 A. Again, as I said, it -- there are various
05:06:30 5 avenues by which this propagation can happen.

05:06:35 6 Q. Just focusing on internal equity. That's all I
05:06:37 7 want to focus on.

05:06:39 8 A. Okay.

05:06:39 9 Q. So one individual --

05:06:40 10 A. Sure. Sometimes -- there are certainly
05:06:41 11 examples -- you could think of examples -- your
05:06:44 12 hypothetical example. Let's say company A in a work --
05:06:47 13 sorry, employee A in a work group, say there are two
05:06:51 14 people doing that job. And that person -- they're both
05:06:55 15 doing very similar jobs. Internal equity, if that -- if
05:07:00 16 one gets a raise because of a cold call, it's certainly
05:07:03 17 possible, because of internal equity that another person
05:07:05 18 would get a raise immediately.

05:07:07 19 Q. It's also possible that it wouldn't happen,
05:07:11 20 right?

05:07:11 21 A. It's -- internal equity concerns would suggest
05:07:14 22 that there is pressure on the other person. It is a
05:07:17 23 possibility that it not happen, yes. That it not happen
05:07:20 24 immediately.

05:07:21 25 Q. Or that it wouldn't happen at all?

05:09:47 1 MR. KIERNAN: Q. So for example, take your
05:09:52 2 hypothetical, or [REDACTED] for that matter. He's a
05:09:59 3 high-impact employee being paid less than some lower
05:10:02 4 performing employees. He gets a raise. What
05:10:07 5 pressure would that have on the lower employee --
05:10:11 6 the lower performing employees?

05:10:15 7 A. Anytime there are people who are -- humans who
05:10:21 8 are working in a group together, there are comparisons
05:10:24 9 made across them. So people are, I think, frequently
05:10:28 10 making comparisons. There is large literatures about
05:10:33 11 inequality and related things where people compare
05:10:37 12 themselves to others.

05:10:39 13 And I think that when -- even if you can
05:10:46 14 imagine a work group, or even if people aren't doing the
05:10:49 15 same kind of job, if they hear other people are getting
05:10:53 16 wages, if they're in similar kinds of things, they
05:10:56 17 might sort of -- there's extra pressure. There is new
05:11:00 18 information about wages increasing and internal equity
05:11:01 19 concerns, and that hypothetical example could certainly
05:11:03 20 lead to other people asking more, negotiating more, or
05:11:06 21 having more information that they might be more valuable
05:11:09 22 than they thought.

05:11:12 23 Q. But it doesn't necessarily lead to an impact to
05:11:15 24 those other people?

05:11:16 25 A. Again, I agree that that particular case or

05:11:19 1 that example, that doesn't -- doesn't have to, though,
05:11:23 2 for my conclusions, because of the multiple avenues that
05:11:26 3 we've talked about in this last sort of -- since our
05:11:29 4 last break. That it doesn't necessarily have to be the
05:11:32 5 case, for one thing, for that example to have this
05:11:37 6 mechanism that -- I'm trying to use the same language.

05:11:41 7 That it doesn't have to be the case for that
05:11:45 8 hypothetical example to lead to suppression of
05:11:51 9 compensation. It just has to -- but that's a possible
05:11:55 10 mechanism. But there are others.

05:11:57 11 Q. But one of the mechanisms would have to operate
05:12:03 12 for there to be widespread impact, correct?

05:12:14 13 A. Certainly --

05:12:15 14 Q. There has got to be at least one.

05:12:17 15 A. There has got to be a mechanism that leads to
05:12:19 16 it, yeah. Absolutely. And as we've talked about, we've
05:12:22 17 talked about at least three of them in the last segment.

05:12:25 18 MR. KIERNAN: Okay.

05:12:26 19 THE VIDEOGRAPHER: We're going off the record
05:12:27 20 at 5:12 p.m.

05:12:28 21 This marks the end of tape No. 3 in the
05:12:31 22 deposition of Kevin Hallock.

05:12:41 23 (Recess taken.)

05:35:17 24 THE VIDEOGRAPHER: We're back on the record at
05:35:18 25 5:35 p.m.

05:35:19 1 This marks the start of tape No. 4.

05:35:28 2 MR. KIERNAN: Q. You mentioned before the
05:35:29 3 break, Dr. Hallock, that although I wasn't following
05:35:36 4 it, these were the questions where I asked about how
05:35:40 5 market data may impact other employees. Not the
05:35:48 6 market data used for the salary ranges. You know,
05:35:51 7 we had that discussion. And then you mentioned that
05:35:54 8 there was other market data that could impact
05:36:00 9 compensation. And I mentioned the word budget, and
05:36:03 10 you said, well, I'm not talking about budgets.

05:36:05 11 So what were you referring to -- do I have you
05:36:09 12 reoriented?

05:36:10 13 A. Yes. I remember the budget, and I thought you
05:36:11 14 were referring to asking me a question about budgets and
05:36:14 15 I didn't think I said budget, so I remember that. I
05:36:17 16 think you were asking about other uses of market data.
05:36:23 17 And I think that's what you were asking.

05:36:27 18 Q. Yes. Yes. So market data, not the market data
05:36:30 19 that was used to construct the salary ranges for each
05:36:34 20 job title. We --

05:36:36 21 A. Right.

05:36:37 22 Q. We talked about that. I've got your answers on
05:36:39 23 that.

05:36:39 24 A. Yes.

05:36:41 25 Q. Is it your opinion that there was other market

05:36:43 1 data being used by one or all of the defendants that
05:36:48 2 would be an avenue that would lead to suppression of
05:37:00 3 compensation of some employees to spread to all or
05:37:04 4 nearly all of the technical class?

05:37:10 5 A. I'm sorry, can you read the beginning part of
05:37:12 6 the question or say it again.

05:37:15 7 Q. Yeah. Was there -- was other market data being
05:37:19 8 used by one or all the defendants that would be an
05:37:23 9 avenue that would lead to suppression of compensation
05:37:26 10 that spread to all or nearly all the technical class?

05:37:32 11 A. Yes, I can give you a specific example of that
05:37:35 12 that I have in my mind, if you will just give me one
05:37:39 13 second.

05:37:40 14 I can give you a general example or I can give
05:37:41 15 you a specific example. Let me find the specific
05:37:45 16 example to start. I don't know how quickly I can find
05:37:53 17 it. I'm thinking it is at 130-ish. No.

05:38:05 18 This is an example where someone is asking
05:38:09 19 someone else -- writing to -- I think we talked about
05:38:12 20 this earlier, and that's why I'm trying to find it,
05:38:14 21 where someone said 3 -- 4 percent, but we're managing it
05:38:18 22 closer to 3 percent.

05:38:21 23 Q. 109.

05:38:23 24 A. What is it?

05:38:23 25 Q. 109.

05:38:24 1 A. 109. Okay.

05:38:25 2 Q. It may be.

05:38:31 3 A. Yeah. Perfect. Thank you.

05:38:32 4 So this is from Pixar. Pixar considered salary
05:38:38 5 increase budgets in considering changes to its
05:38:43 6 compensation system. So there is an email where
05:38:45 7 Ms. McAdams writes, quick question from me to others at
05:38:51 8 other companies. For those of you who can share this
05:38:53 9 information -- sorry. Let me say what she wrote.

05:38:56 10 "Quick questions from me. For those of you who
05:38:58 11 can share this info, what is your salary increase budget
05:39:01 12 for FY07? Ours is 4 percent, but we manage it closer to
05:39:06 13 3 percent on average. Are you doing anything close,
05:39:08 14 more, or less?"

05:39:10 15 Here's an example, a salary increase budget is
05:39:13 16 another kind of market data an organization might use.
05:39:18 17 So what it looks like in this example is this looks like
05:39:24 18 a little survey, writing to whoever was on the email
05:39:27 19 chain, I can't remember. We can look it up, maybe, if
05:39:31 20 the -- if the -- all the recipients are on the thing.
05:39:35 21 But what the -- this person is looking for information
05:39:42 22 on what others are going to give for their expected
05:39:50 23 raise on average. So that budget -- that's maybe where
05:39:53 24 the word budget came from, I'm sorry about that.

05:39:55 25 So the idea here is another kind of market

05:39:58 1 data, to answer your question, is not on those specific
05:40:00 2 jobs, but on average, what is the raise going to look
05:40:04 3 like. What would the average raise look like this year.

05:40:06 4 And in this example, this person was talking
05:40:09 5 about 4 percent or maybe even closer to 3 percent, but
05:40:12 6 that's another kind of market data, just what are raises
05:40:18 7 going to look like next year.

05:40:23 8 Q. And for that to be an avenue, for the
05:40:27 9 transmission of suppression of compensation of some
05:40:32 10 employees to all or nearly all of the technical class,
05:40:37 11 that market data has to also be suppressed; is that
05:40:39 12 correct?

05:40:41 13 MS. DERMODY: Object to form.

05:40:43 14 THE WITNESS: The idea on this avenue -- we
05:40:45 15 talked about multiple avenues. The idea is -- so again,
05:40:50 16 there are a variety of reasons why I come to the
05:40:53 17 prediction that the suppression -- or that the
05:40:57 18 no-cold-call agreements led to -- predicted to suppress
05:41:04 19 the compensation of all of compensation is -- one avenue
05:41:09 20 is if raise information -- if there is suppression and
05:41:16 21 raises are going to be smaller because of suppression,
05:41:19 22 that could get transmitted back if those data are used
05:41:22 23 to propagate through a system.

05:41:25 24 MR. KIERNAN: Q. So if I understand what
05:41:26 25 you are saying, if the overall salary increase

05:41:31 1 budget for a year was lower because of the
05:41:36 2 suppression of compensation for some employees due
05:41:43 3 to the agreements, that could lead to suppression
05:41:47 4 for all or nearly all technical employees. Is that
05:41:50 5 what you are saying?

05:41:51 6 A. It's certainly the case that if the data --
05:41:54 7 what I'm saying here, the prediction here, is that if
05:42:01 8 the market data are -- for the raise, what the market is
05:42:05 9 talking about, the expected raise next year is
05:42:08 10 suppressed, then relying on those data to make raises
05:42:12 11 next year can be predicted to lead to suppression back
05:42:18 12 in those organizations that are using those data, which
05:42:20 13 I think is what you said. Slightly different words.

05:42:23 14 Q. And is it your testimony that it would be
05:42:26 15 predicted to impact all or nearly all of the technical
05:42:31 16 class if that condition were met?

05:42:40 17 A. If that particular condition were met. I want
05:42:42 18 to think about that because there are various
05:42:45 19 mechanisms. Certainly can be predicted.

05:42:52 20 So let me say it this way: If an organization
05:42:59 21 uses -- bases its raise this year, its average raise on
05:43:05 22 market data that's suppressed, and they use a smaller
05:43:09 23 number than they would have in the absence, and they
05:43:11 24 have a system then for doing that, say they gave an
05:43:14 25 across-the-board raise, which is a hypothetical example,

05:43:17 1 although there are examples of that in this case, then
05:43:21 2 if they're giving an across-the-board raise based on
05:43:24 3 market data, they would be given a smaller raise. So it
05:43:26 4 would affect all or nearly all.

05:43:28 5 Q. What if it were the fact -- facts that the
05:43:33 6 managers were provided a budget and were given
05:43:38 7 discretion to allocate that budget as they see fit?

05:43:45 8 A. I think that's the -- that -- that is the
05:43:49 9 same -- the same concern -- the same issue in the sense
05:43:52 10 that the budget -- that still applies, because that
05:43:58 11 budget, in the example -- in one of the avenues that
05:44:03 12 could lead to my conclusions, those budgets don't come
05:44:08 13 out of nowhere. They can come out of the use of market
05:44:11 14 data. So I think that that's just a subset of what we
05:44:14 15 just talked about.

05:44:17 16 Q. To test that theory, would you have to analyze
05:44:20 17 how a manager, in fact, allocated the additional -- or
05:44:26 18 the merit budget increases?

05:44:28 19 MS. DERMODY: Object to form.

05:44:30 20 THE WITNESS: So to test my prediction?

05:44:33 21 MR. KIERNAN: Q. Uh-huh.

05:44:35 22 A. Again, I haven't -- I made a prediction. I was
05:44:38 23 asked to comment on these two areas. So I'd want to
05:44:41 24 think about that. As an example of a more broader
05:44:45 25 question you asked earlier about how would one do a

05:44:49 1 study of estimating magnitudes, and that's not something
05:44:54 2 that I was asked to do.

05:44:57 3 Q. Can you turn to figure 12.

05:45:01 4 A. Sure.

05:45:16 5 MS. DERMODY: Figure 12 on 112.

05:45:18 6 THE WITNESS: Figure 12. I've got it.

05:45:21 7 Page 112.

05:45:22 8 MR. KIERNAN: Q. And this is the merit
05:45:23 9 increase matrix from Google; is that correct?

05:45:25 10 A. Yep.

05:45:26 11 Q. And this relates to base pay?

05:45:28 12 A. Again, we talked about that earlier this
05:45:31 13 morning before lunch, and --

05:45:36 14 Q. And you didn't know?

05:45:37 15 A. Well, we talked about salaries because of the
05:45:39 16 footnote to salaries.

05:45:41 17 Q. Right.

05:45:42 18 A. So we could speculate that this is about
05:45:43 19 salaries, but it doesn't -- I don't think it matters,
05:45:45 20 really, to the conclusion.

05:45:56 21 Q. We focused today, and your report appears to be
05:46:00 22 focused on impacts to base pay. Have you reached an
05:46:05 23 opinion on predictions -- strike that.

05:46:09 24 Have you analyzed whether suppression of
05:46:18 25 compensation in the form of bonuses or equity would be

05:55:12 1 I think, fixated on your specific examples.

05:55:14 2 Q. I asked you how that could happen. And you
05:55:17 3 said, well, the avenue it could happen is through market
05:55:20 4 data. So I want to know how it goes from one job title
05:55:23 5 to another --

05:55:24 6 A. Another could be through internal equity
05:55:25 7 concerns.

05:55:26 8 Q. Okay. How did that work --

05:55:28 9 A. I was thinking mostly about this. But it could
05:55:30 10 be that you have people doing one job, in one job title,
05:55:38 11 people doing another job in another job title that's
05:55:41 12 similar, and they see wages going up over here. They're
05:55:47 13 talking about their wages, compensation is going up in
05:55:49 14 the market, and I think that that adds to upward
05:55:52 15 pressure.

05:55:52 16 Q. So it would depend upon the employees in the
05:55:55 17 other job title knowing what the employees in that other
05:55:59 18 job title made?

05:56:00 19 A. No, not necessarily. That's -- that could be
05:56:03 20 one avenue. But it also could be that managers are
05:56:07 21 looking across, oh, they're kind of similar work and we
05:56:10 22 want to treat people equitably.

05:56:12 23 Q. Any evidence of that? Can you point to any
05:56:16 24 evidence where managers considered compensation of other
05:56:22 25 job titles when making compensation decisions for

05:56:26 1 members of their team?

05:56:29 2 A. I certainly can think of --

05:56:32 3 Q. Point it out to me.

05:56:33 4 A. Sorry.

05:56:34 5 Q. Including --

05:56:37 6 A. Sorry. Let me finish my answer. I certainly
05:56:39 7 can think of ones where it's within their job group, but
05:56:43 8 I'm not sure about job titles. So there are examples
05:56:46 9 here, well, what about equity concerns and so on. And
05:56:48 10 I'm just trying to remember if they were in different
05:56:50 11 job titles, so --

05:56:52 12 Q. Did managers --

05:56:53 13 MS. DERMODY: I'm sorry. You are talking over
05:56:54 14 each other.

05:56:55 15 MR. KIERNAN: Thank you.

05:56:56 16 THE WITNESS: Let me finish.

05:56:57 17 An example was the one we talked about, I think
05:57:01 18 it was Mr. Brennan. We were talking about somebody with
05:57:04 19 \$400,000 -- was somebody wanting to come in with
05:57:07 20 \$400,000 salary. And they were saying would this cause
05:57:11 21 equity concerns relative to Brennan. I can't remember
05:57:15 22 it precisely. If you can find it, I'd be happy.

05:57:18 23 MR. KIERNAN: Q. Yeah. 114. Is it 115?

05:57:20 24 It's one of these.

05:57:21 25 A. 115.

05:57:22 1 Q. 115.

05:57:24 2 A. So I don't know, they may have been the same
05:57:26 3 job title, they might have been the same -- but it could
05:57:29 4 actually be a different job title. It could be the
05:57:33 5 director of one functional area and a director of, you
05:57:36 6 know, the head of one functional area and the head of
05:57:38 7 another functional area.

05:57:40 8 And even pressure -- internal equity doesn't
05:57:46 9 have to mean the same job. There is a system. There is
05:57:50 10 a philosophy across the company. And if people in an
05:57:54 11 area that's really unrelated, if the wages are going up
05:57:58 12 in an area that are, say, even outside of this, a
05:58:04 13 technical nature, and nontechnical nature, still, people
05:58:08 14 are making comparisons across those two things.

05:58:10 15 Q. But you are assume -- Dr. Hallock, you are
05:58:12 16 assuming that, correct?

05:58:14 17 MS. DERMODY: Object to form.

05:58:14 18 MR. KIERNAN: Q. You are assuming that the
05:58:16 19 managers that are making compensation decisions for
05:58:20 20 different job titles are comparing the decisions
05:58:25 21 they're making.

05:58:28 22 A. You were asking me about whether I could find a
05:58:30 23 specific example of this happening across job titles.

05:58:33 24 Q. And you couldn't find one, correct?

05:58:35 25 A. No, I just began to look. I wondered if this

05:58:37 1 one where Ms. Morris was saying Rob is a strong
05:58:40 2 negotiator and would expect to be keeping his base
05:58:43 3 salary at 400K, however I am recommending that he come
05:58:46 4 in slightly below in base because of internal equity
05:58:48 5 relative to John Brennan. And I was wondering if maybe
05:58:51 6 we knew what their job titles were.

05:58:53 7 Q. Do you know?

05:58:53 8 A. I don't know here, no.

05:58:54 9 Q. Okay.

05:58:56 10 A. And I -- so I wasn't saying I don't -- I can't
05:59:00 11 find one immediately upon asking.

05:59:06 12 Q. What are the conditions that are necessary for
05:59:09 13 internal equity to call employees in different job
05:59:14 14 titles, or that would cause an impact of compensation at
05:59:19 15 one job title to propagate, as you used the term, to
05:59:24 16 another job title?

05:59:27 17 A. Again, I think that's one of the multiple
05:59:29 18 mechanisms we talked about. And I think that this is a
05:59:36 19 sort of well-discussed issue in the -- in teaching in
05:59:42 20 practice and the literature on compensation, that there
05:59:47 21 needs to be some sort of -- that, you know, from a
05:59:51 22 psychological perspective or the academic perspective,
05:59:55 23 that one's inputs in their compensation are in some ways
06:00:01 24 related.

06:00:01 25 And so I'm -- some are saying that based on

06:01:17 1 some of those conditions might be similarity, right?

06:01:20 2 And so you could imagine this sort of a
06:01:23 3 neighbor, a job title that's near a job title, and there
06:01:27 4 is a -- there is tension there, pressure there. And
06:01:30 5 then to another job title that are similar. But as I
06:01:33 6 said before, you could even have very quite distinct job
06:01:36 7 functions, job families, functional areas, where one
06:01:42 8 might be marketing and one might be engineering, and
06:01:46 9 pressure on one, because it's the same organization,
06:01:49 10 could lead to pressure on the other.

06:01:51 11 MR. KIERNAN: Q. You could design a
06:01:53 12 formalized system where that would happen, or make
06:01:55 13 it more likely. Focusing on these individual
06:01:59 14 defendant companies --

06:02:01 15 A. Uh-huh.

06:02:02 16 Q. -- and focusing on internal equity avenue.
06:02:04 17 Okay?

06:02:06 18 A. Uh-huh.

06:02:06 19 Q. What were the features in place that would
06:02:11 20 cause you to predict that an impact of compensation in
06:02:14 21 one job title would propagate to other job titles?

06:02:20 22 A. Again, I'm -- I don't know what you mean by
06:02:23 23 features, but I'm thinking about the similarities of the
06:02:26 24 job or the similarities of the work or the sort of --
06:02:31 25 not even similarities, but contributions that they're

06:02:36 1 making.

06:02:37 2 Q. Okay.

06:02:37 3 A. Back to the language of my job evaluation
06:02:40 4 points as an example. If one person actually shows in
06:02:44 5 an example, I think it's Exhibit -- sorry, not an
06:02:48 6 exhibit, it's a figure. An example in figure 5, which I
06:02:53 7 don't think we discussed, where --

06:02:56 8 Q. That's out of your book, though, right?

06:02:57 9 A. Yeah.

06:02:58 10 Q. Can you use an example of one of the
06:02:59 11 defendants?

06:03:00 12 A. Well, I'm trying to answer the question. And
06:03:02 13 I'm trying to say that an engineer, if you have a
06:03:07 14 certain number of job evaluation points in one job
06:03:10 15 family, you might have a similar number in another job
06:03:13 16 family; and therefore, there is the idea that people
06:03:16 17 have similar contributions. And there you could say if,
06:03:21 18 by virtue of this system, this is one mechanism they're
06:03:26 19 judged to have similar contributions, they should be
06:03:28 20 paid similarly. So if there is pressure on one, there
06:03:31 21 should be pressure on the other.

06:03:32 22 Q. Which defendant did you find that mechanism to
06:03:35 23 be in place, that you just described?

06:03:37 24 A. I think the idea of the, you know, specific --
06:03:45 25 I don't -- I can't, as I'm sitting here now thinking

06:03:49 1 about the report, thinking about all the depositions I
06:03:51 2 read, can't think of an example on the spot of where
06:03:56 3 there was a -- an example of someone saying a person
06:04:00 4 over here in this job family led to pressure in this job
06:04:04 5 family over here.

06:04:07 6 Q. And can you point to any defendant that had a
06:04:11 7 mechanism where that would make that more likely?

06:04:16 8 MS. DERMODY: Object to form.

06:04:17 9 THE WITNESS: Again, this is, I think, back to
06:04:18 10 where we were before on the specifics of did it happen
06:04:21 11 or the predictions based on my knowledge of compensation
06:04:25 12 systems in the last 24 years, 20-whatever years, that
06:04:31 13 they're -- I'm sorry, I....

06:04:37 14 MR. KIERNAN: Q. Go ahead.

06:04:38 15 A. No. I just lost my train of thought because
06:04:41 16 you were saying something else. I'm sorry. Well, I
06:04:43 17 can't remember what I was saying.

06:04:46 18 MS. DERMODY: Do you want to read the question
06:04:47 19 back and draw your answer? Because you stopped when you
06:04:50 20 were watching counsel pass notes.

06:04:52 21 THE WITNESS: I saw him talking, so I'm sorry.

06:04:56 22 MR. KIERNAN: Q. Can you point to any
06:04:57 23 defendant who had a mechanism where it would make it
06:05:00 24 more likely that an impact to compensation in one
06:05:04 25 job title would propagate to another job title?

06:06:38 1 MS. DERMODY: Object to form.

06:06:44 2 THE WITNESS: Again, I think that there is two
06:06:47 3 steps. One is it's -- let's -- the manager is going to
06:06:53 4 make a decision about how the manager wants to make the
06:06:55 5 increases.

06:07:00 6 MR. KIERNAN: Q. Uh-huh.

06:07:00 7 A. And let's say that the manager has 10 percent
06:07:07 8 of her current staff's salaries to add on for next year,
06:07:13 9 that's how that would work. Let's say that she makes
06:07:17 10 that decision by giving a bunch of fives, some sixes,
06:07:23 11 some fours. That's when she understands she has a
06:07:30 12 10 percent increase budget.

06:07:33 13 If instead she's told she has a 5 percent
06:07:36 14 increase budget, she would give -- I think I said -- I
06:07:41 15 said before fours, fives and sixes when she had a 10 --
06:07:44 16 that's a bad example. Let me start again.

06:07:48 17 Q. Just use that example. I'm following your
06:07:50 18 logic.

06:07:52 19 A. Let's say -- I'm sorry. I don't know why you
06:07:55 20 would be giving four, five and sixes if you had 10. But
06:07:58 21 let's say that under one budget allocation she was
06:08:01 22 giving four, fives and sixes. Let's say, then she's
06:08:06 23 given a smaller budget allocation and she was giving,
06:08:10 24 instead of fours, fives, and sixes, two, two and a
06:08:15 25 halves, and threes.

06:08:17 1 She's giving twos to people that she wants --
06:08:19 2 in one scenario she's giving fours because she has more
06:08:22 3 money. In the other scenario she's giving those same
06:08:26 4 people two. In the first scenario she's giving sixes.
06:08:28 5 In the second scenario she's giving those same people
06:08:31 6 three.

06:08:31 7 So it still follows in that case when
06:08:34 8 individual managers are making individual decisions.
06:08:38 9 Because they're making their decisions, and they're
06:08:41 10 going to make their decisions. And if they've got
06:08:44 11 larger numbers, imagine -- I should have said it this
06:08:48 12 way.

06:08:49 13 A manager makes decisions within the framework,
06:08:54 14 and let's say that the manager is told wait a minute,
06:08:58 15 we're going to cut the budget in half, just divide all
06:09:01 16 those numbers by two. It's a little bit different than
06:09:04 17 that, depending on how many workers are in each group,
06:09:06 18 but that's roughly the case. So I don't think that has
06:09:09 19 an impact. I thought you were asking that question when
06:09:11 20 you brought this up earlier.

06:09:13 21 Q. But you were assuming, Dr. Hallock, that the
06:09:16 22 manager would make the allocation -- the same allocation
06:09:21 23 in both scenarios, just lowering the percentage but by
06:09:26 24 the same rate; isn't that right?

06:09:32 25 In other words, a manager could decide with,

06:09:34 1 let's say, more money, going the opposite way, with
06:09:38 2 additional funds, I can give all that extra money to my
06:09:42 3 high performers and keep the low performers the same?

06:09:46 4 A. But I don't think -- I think what you are
06:09:48 5 trying -- what you are saying to me is what would a
06:09:51 6 manager do in a case where she had a certain budget, and
06:09:54 7 what would a manager do in a case where she had another
06:09:57 8 budget.

06:09:58 9 And it's -- it seems to me inconceivable that
06:10:04 10 she would -- I'm going to give an extreme example -- but
06:10:07 11 that she would allocate, in one scenario, the money
06:10:10 12 evenly to all the workers; and if she had a lot more
06:10:13 13 money, she would give all of the money to one worker.
06:10:16 14 So why would she change the relative -- why would she
06:10:19 15 change the relative mixes if she were faced with a
06:10:27 16 bigger budget?

06:10:29 17 Q. If the evidence showed that that, in fact, did
06:10:32 18 happen, where managers that had additional budget money
06:10:37 19 allocated it disproportionately than they did before,
06:10:43 20 would that cause you to change your opinion?

06:10:45 21 MS. DERMODY: Object to form.

06:10:47 22 THE WITNESS: I think that what you are talking
06:10:48 23 about is a situation where your example is a situation
06:10:53 24 where a manager is making a decision, in another period
06:10:57 25 a manager is doing something else.

06:11:00 1 We're talking -- prior to that you and I were
06:11:03 2 talking about when I was talking about five and ten or
06:11:06 3 the four, five and six, or the two, two and a half and
06:11:09 4 three, a situation where we're exactly facing the same
06:11:13 5 decision at the same point in time. And you're -- I
06:11:18 6 think what you are proposing is if you saw something.
06:11:21 7 Well, you can't see the counterfactual or the but-for
06:11:25 8 situation.

06:11:25 9 MR. KIERNAN: Q. Well, let's look at
06:11:26 10 figure 12.

06:11:27 11 A. Okay.

06:11:28 12 Q. So let's assume that the merit increase budget
06:11:32 13 is 5 percent.

06:11:35 14 A. Okay.

06:11:36 15 Q. Okay. And the guideline is pay 0 percent for
06:11:41 16 any of the employees that fall within these various
06:11:46 17 categories set forth in figure 12, correct?

06:11:48 18 A. Yes. So for example, someone with a 2.9
06:11:50 19 percent performance rating. No guideline for merit.

06:11:55 20 Q. Right.

06:11:55 21 A. Yes.

06:11:57 22 Q. And if you had a -- you know, a 3.1 percent --
06:12:02 23 or 3.1 performance rating --

06:12:04 24 A. Uh-huh.

06:12:05 25 Q. -- and you are at 90 percent through 120

8 I further certify that I am not of counsel or
9 attorney for either of any of the parties in the
10 foregoing proceeding and caption named or in any way
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of
13 the original transcript will render the reporter's
14 certificates null and void.

15 In witness whereof, I have hereunto set my
16 hand this day: June 18, 2013.

17	X	Reading and Signing was requested.
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18 | _____ Reading and Signing was waived.

19 Reading and signing was not requested.

20

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23

24

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GINA V. CARBONE

CSR 8249, CRR, CCRR